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PART ONE  
THE NATURE AND ORIGIN OF THE STATE





## Nature and Scope of Political Science

**Definition.** Aristotle tells us a simple truth when he says: "He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or God." It means that man is a social animal. He is born in society and he lives in society. This is true for two reasons. Man is a very gregarious animal. He is easily attracted by sympathy and the desire for sympathy. He prefers company to solitude. He admires and imitates others, and he likes to be admired and imitated. These social impulses aside, necessity also compels man to live a social life. No man is self-sufficient, and nature has created one. His needs are many and purposes numerous. For the satisfaction of his diverse needs and fulfilment of his various purposes, he must associate with his fellows and seek their co-operation. Such is the testimony of history. Here and there an individual or a family has existed apart from the rest of the human race, but that is an exception rather than a rule. The general rule is that men live, and always have lived, in social groups.

If man is social by nature, he is quarrelsome too. This aspect of the nature of man, and the instinct of living together and co-operating with one another require adjustment of behaviour according to some accepted rules. These rules prescribe a course of conduct based upon men's interests for one another. The first and the most important rule of social conduct, therefore, is: "Do unto others as you would have others do unto you." It means that I should provide for others the same conditions of life as I wish for myself. If I wish to grow and prosper, I owe it to others that they, too, should have the same conditions of life as I wish for myself. When I allow others what I wish for myself, I recognise my obligations to others while establishing my claims on others. Realization of this fact is a way of regulating human conduct. But all conduct in society must conform to certain set rules of common behaviour. This means that society be properly organized. Unorganized society is more a mob than a society and the mob is subject to no restraint. An organized society must be territorially settled. People do not become a community unless they live a settled life occupying a definite territory distinct from others. That is the first requisite of common life, mutual adjustment and co-operation; a life to share each other's weal and woe. An organized society requires the presence of some individuals who can make and enforce rules of universal application for uniform behaviour.



In the absence of such an agency, there is neither cohesion nor unity of purpose for which men had organized themselves and settled down territorially.

The society so organized is called the **State**, the rules which determine social behaviour are the **laws of the State**, and the individuals who make and enforce the laws constitute the **government**. The subject which deals with man in relation to the **State and government** is called **Political Science**. Political Science may be defined, in its simple form, as the study of man in the process of governing himself.

✓ **Scope.** There is a difference of opinion on the subject-matter of Political Science. Some writers restrict the scope of Political Science to the study of the **State** alone. For example, Bluntschli, the renowned French scholar, defines it "as the science which is concerned with the **State**, which endeavours to understand and comprehend the **State** in its fundamental conditions, in its essential nature, its various forms of manifestation, its development." Gareis and Garner are also of the same opinion. They exclude the study of **government** from the scope of Political Science, as the **State** for them, *ipso facto*, includes the study of **government**.

There are others, like Dr. Stephen Leacock, who maintain that Political Science deals only with the **government**. The word **State** nowhere occurs in their definition.<sup>1</sup> But Laski,<sup>2</sup> Gettell<sup>3</sup> and Gilchrist<sup>4</sup> take a more realistic view and emphasise that the scope of Political Science embraces the study of both the **State and government**, although Laski maintains that the **State** in reality means the **government**.

We also subscribe to this generally accepted view. There can be no **State** without **government**. The **State** is a people organised for law in a definite territory. It issues orders and punishes those who violate them. But no **State** acts by itself. There must be present in every **State** some man or body of men competent to issue orders on its behalf and see that they are obeyed. The agency which so acts on behalf of the **State** is called **government**. The **government** is an integral part of the **State**; without **government** there can be no **State**. A description of the **State** must, therefore, include the study of the structure and function of **government**, its forms, and other institutions connected with it.

The **State** remains, however, the central subject of our study. The whole mechanism of **government** revolves round it. The need for **government** arises because there has been need for the **State** and the need for the **State** is deeply embedded in the nature and necessities of man. Without the **State** life itself cannot be sustained. But this is not the object of the **State**. "The **State** comes into existence," as Aristotle says, "originating in the bare needs of the life and continuing in existence for the sake of good life." Man cannot be what he desires to be without the **State**. It is indispensable for his existence and development. V

1. Leacock, Stephen, *Elements of Political Science*, p. 3.

2. Laski, H. J., *The Danger of Being a Gentleman*, pp. 33-34.

3. Gettell, R. G., *Introduction to Political Science*, p. 4.

4. Gilchrist, R. N., *Principles of Political Science*, p. 2.



State plays so important a role in the life of man, it is necessary to know it in all its aspects, what the State has been, what it is and what it ought to be.

The State as it is, refers to the existing nature and structure of the State, and an analysis of the principles and practices of the modern governments. But what the State is, can best be understood by knowing what it has been. We cannot know the present fully and precisely without knowing the past. This involves the study of the origin and evolution of the State, and the development of the mechanism through which it functions.

But the study of the past and the present of the State and its government does not exhaust the scope of Political Science. We must also see how far the existing structure of the State responds to the needs of man and caters to his well-being. An intimate knowledge of the past and the present makes us wiser for the future and the lessons we gain therefrom enable us to reform our political institutions according to our aspirations. It means, to discover the principles that should be adhered to in operating the machinery of the State, to criticise what is bad or inefficient and to suggest improvements, so that the State serves its purpose admirably in achieving social welfare. It is the dream of an ideal life for the State, though what an ideal life is and how it is to be achieved has been a subject of great controversy. All this relates to the study of the State as it ought to be. Here Political Science becomes speculative in character and we consider and evaluate the theories of the State and government which are expounded by political philosophers—the problems of social welfare, governmental economic programmes, international co-operation and amity, and a wide range of other matters that confront mankind.

Political Science, thus, enters into various fields and touches many horizons. The quest for a just and happy life cannot be compartmentalised in the political mould alone. It must have laces from other moulds too, in order to make it an integrated wholesome political life. The scope of Political Science, accordingly, extends to the study of various other aspects of human life and their impact on the State and government. It is a dynamic study of the dynamic man and his life. Man may never reach the stage of perfection so long as his knowledge is changing and the search for an ideal life remains unabated with him. To repeat again, Political Science is an historical investigation of what the State has been, an analytical study of what the State is, and a politico-ethical discussion of what the State should be.

## TERMINOLOGICAL DISTINCTIONS

The science of the State and government is designated by different names, although we preferred to call it Political Science. Some term it **Politics**, others name it as **Political Theory**, and many designate it as **Political Philosophy**. The absence of a commonly accepted term causes a good deal of confusion in understanding precisely what it concerns the State and the government. For a proper appreciation of the subject matter of our study it is, therefore, necessary to know clearly the meaning of each term with which it is designated and, then, give it a correct name.



**Politics.** The term **Politics** was first employed by Aristotle and used it as a title for his famous book dealing with the phenomena of the State. The word **Politics** is derived from the Greek word **polis** meaning City. To the Greeks the City was the State and the subject which dealt with the **City-State** and its problems was named **Politics**. The use of the term **Politics** in this sense is unobjectionable. In our own times, some eminent political thinkers, as Harold J. Laski,<sup>5</sup> and R. H. Solatu,<sup>6</sup> preferred to use the term **Politics** for the subject of our study.

But the modern usage gives the term **Politics** entirely a different meaning. It is now commonly used to mean current political problems that confront a country and its government. Gilchrist says that the term "Politics nowadays refers to the current problems of government, which often as not are more economic in character than political in the scientific sense. When we speak of a man as interested in politics, we mean that he is interested in the current problems of the day, in tariff questions, labour questions, in the relation of the executive to the legislature, in a question, in fact, which requires or is supposed to require the attention of the law-makers of the country." In the context of this explanation politics of one country differ from the politics of another country. Indian politics and British politics are not identical, because of their different economic, political and social problems. Even within the same country politics of one party differ from the politics of another party, as each party offers its own solution of the problems which concern the country. For instance, the Conservative and Labour Parties in Britain fundamentally differ from one another in their approach and solution of the political and economic problems concerning their country. Similarly, the politics of the Indian National Congress differ from the politics of the Swatantra Party or the Communist Party of India.

It follows, then, that a politician is a person who interests himself in the politics of his country and that of a particular political party which conforms to his political views. His interests are varied and go beyond the boundaries within the competence of Political Science. A politician is not a student of Political Science. He is only concerned with the present problems of his country and their solution as his party suggests. Politics is, accordingly, an art rather than a science. Political Science, on the other hand, inquires into the nature, conditions, origin and development of the State and government. It is a scientific study of the State as it is, the State as it has been, and the State as it ought to be. A politician has nothing to do with all this. Without knowing the A B C of Political Science, he can still claim to be a politician. Moreover, the principles of Political Science are of universal application and are everywhere the same. It is not so with politics. The use of the term **Politics** as a designation of the subject-matter of our study, is, accordingly, apt.

During the course of the nineteenth century when democratic forms of government emerged in Britain and elsewhere the term 'Politics' was

5. Laski gave to his famous book the title of *A Grammar of Politics*. The title of his other book is *An Introduction to Politics*.

6. R. H. Solatu's book also carries the title *An Introduction to Politics*.



vided into two branches, theoretical and applied. In Theoretical Politics as included the study of the fundamental characteristics of the State without reference to its activities or the means by which its ends were attained. Theoretical Politics, accordingly, is related to the study of the origin of the State, its nature and attributes, and ends together with the principles of political organization and administration. Applied or Practical Politics embraced the study of the actual working of the government of the State in action. This is how Sir Frederick Pollock made the classification?—

### I. Theoretical Politics

Theory of the State  
(origin, classification of forms of government, sovereignty)

Theory of Government  
(forms of institutions, executive departments, province and limits of positive law)

Theory of Legislation  
(objects of legislation, philosophy of law or general jurisprudence, method and sanction of law, interpretation and administration, mechanics of law-making)

Theory of the State as an artificial person  
(relation to other States and bodies of men, International Law)

### II. Applied Politics

A. The State  
(existing forms of government)

B. Government  
(constitutional law and usage, parliamentary systems, army, navy, police, currency, budget and trade)

C. Laws and Legislation  
(legislative procedure, courts of justice and their machinery, judicial precedents and authority)

D. The State Personified  
(diplomacy, peace and war, conferences, treaties and conventions, international agreements).

This was, no doubt, a useful classification as it covered the study of the State in all its aspects. But when democratic institutions were established in different countries and it fell upon the people to form the government and run the administration in accordance with the programme of the Party in power, as endorsed by the electorate at the time of the elections, the necessity of precisely defining 'Politics' was felt. The scientific study of the State was designated as **Political Science** whereas the term **Politics** was used for the day-to-day public affairs and the actual problems, in their various aspects confronting the country, and their possible solutions.

**Political Philosophy.** When in the nineteenth century distinction was made between 'theoretical politics' and 'applied politics', many writers preferred to designate the former as Political Philosophy. They assigned various reasons for their choice. It was argued by some British political thinkers that the study of the State constituted a part of the study of the universe with which philosophy proper was concerned and as Philosophy the unifier of knowledge, the study concerning the State should be



regarded as one of its sub-divisions. There were others who maintained that Political Philosophy sought not so much as an explanation of the State as justification for its existence. According to Sidgwick the study of Politics, as he calls it, "is concerned primarily with constructing, on the basis of certain psychological premises, the system of relations which ought to be established among the persons governing, and between them and the governed in a society composed of civilised men as we know them". The State, its structure, its nature, and its purpose, therefore, depended upon our conception of right and wrong and the subject of study relating to the principles underlying political institutions should aptly be designated as Political Philosophy.

But this is not correct. It is true that there is much in common between Political Philosophy and Political Science, for it is difficult to separate the purpose of political life from the purpose of life itself. In fact, Political Philosophy is prior to Political Science as it provides a basis for the latter. But all this does not mean that there is no distinction between the two. In the first place, the scope of Political Philosophy is narrower than that of Political Science. Political Philosophy deals with the nature and purpose of the State, the rights and duties of the people who inhabit it, the place of the individual in relation to the State, and the ideal which the State aims to achieve. Herein are involved theoretical or speculative consideration of the fundamental principles and essential characteristics of the phenomena of the State and government. Political Science, on the other hand, is as much concerned with the principles which underlie the political institutions as the working of the political institutions themselves. It is an empirical study of the dynamic man. Circumstances change and so do the habits of man. One generation must be treated differently from another for its political needs and their solutions. Political Science teaches us a great deal about men and their governments. Some of the conclusions have persisted for centuries, others have been rejected, others again are accepted today and may be rejected by future generations. Contemporary Political Science is now engaged in an intensive "quest for the real", and the methods it adopts are scientific. Political Science has, therefore, certain definiteness of meaning which is not found in Political Philosophy." Its approach is scientific and science is conceived as addressing itself to the real against the ideal. Though idealism is as much a part of Political Science as realism, yet both are so blended that their interaction produces results conforming to the reality of human life. But a political philosopher observes the actual in the context of the ideal, the momentary in the light of the eternal, the particular in the framework of the universal. This makes the subject highly theoretical. Political Philosophy, accordingly, does not solve the riddles of political problems of man. In brief, political philosophers are interested not so much in how people and governments behave as they are in how they ought to behave. If the political scientist studies reality and tries to explain its functioning, the political philosopher studies ideas and tries to discover which have the greatest moral validity.

**Political Sciences.** A new thought has recently emerged in France



which suggests that the division of Social Sciences into separate branches, as Political Science, Sociology, Economics, Ethics, etc., is not a logical analysis of the affairs relating to the organised society. In fact, they constitute one integrated study of man and society and one cannot be separated from the other as all act and react upon each other. They should, therefore, come under one umbrella and named as **Political Sciences**. Raymond Aron says that in France there is no **Political Science** in the singular. "The term used is political and moral (or political, economic and social) sciences. Political Science is not recognised either as a scientific discipline or as a University school."<sup>9</sup>

It is true that there can be no rigid compartmentalization of human affairs and all problems relating to man and society need an integrated solution, but it does not exclude their division into specialised branches of study, each having its own focus of interest. If all Social Sciences are banded together as a single study there is likely to be inconceivable confusion, extraneous matters creeping in with no hope to obtain desirable results. Omniscience in any sphere leads to incompetence with disastrous results. Then, all problems relating to human affairs are not political in their character. Nor do they demand a political solution. It is, again, to endow the State and Government with omniscient sphere and powers. It is, therefore, appropriate and advantageous to divide the Social Sciences into different branches of specialised study, each branch having its own distinct focus of interest around which its study should revolve, of course, never oblivious of the fact that no branch of study is exclusive to itself. All are inter-dependent and inter-related yet separate. Political Sciences is, accordingly, not a correct designation. It must be used in singular.

**Political Science.** Political Science is the scientific designation of the subject of our study, and this name has been accepted by the political scientists drawn from various countries who assembled in a meeting under the auspices of the UNESCO. It covers the whole range of knowledge regarding the political governance of man. According to Paul Janet, Political Science "is that part of social science which treats the foundations of the State and the principles of government." The foundations of the State and principles of government have their roots in the past and their branches swing towards the future. It is a systematic study which delves deep into the political problems of yesterday for the benefit of today and utilises the wisdom gained therefrom for the aspirations of tomorrow.

With the interaction of the new forces during recent times necessitating new approaches directed to the study of Political Science, it has been suggested that Political Science should no longer be defined in terms of objects such as the State. It should be defined only in terms of activity and, accordingly, Catlin defines Political Science as the study of "the act of human and social control" or the "study of control relationship of wills".<sup>10</sup> There are others who would hardly make it distinguishable from

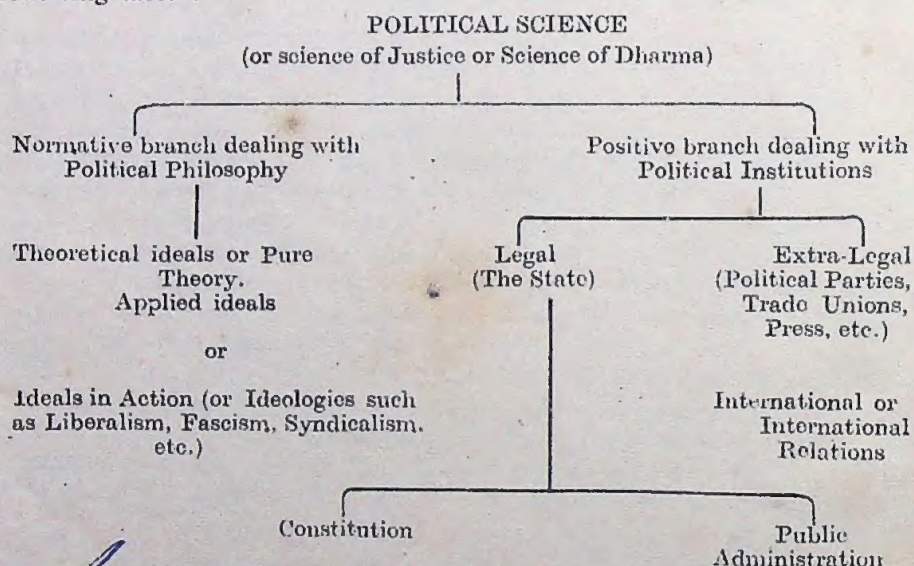
9. *Contemporary Political Science: A Survey of Methods, Research and Teaching*, Unesco, p. 50.

10. Catlin, George, E. G., *A Study of Principles of Politics*, pp. 69, 75, 76.



the subject matter of Sociology. German writers on the subject regard it as the study concerning "the problem of power and social control".<sup>11</sup> Whatever be the merits of such definitions, they have not so far taken any tangible shape and the well-accepted ideas about Political Science continue to hold good.

Max Weber defines Political Science as both a positive and normative science which studies human behaviour in its justice-seeking aspect. Dr. Krishna P. Mukerji accepts this new definition and includes in the scope of Political Science branches and sub-branches for study as given in the following table<sup>12</sup>:—



**Is Political Science really a Science?** So far we have treated the subject of our study as a science. Aristotle regarded 'Politics' as the master or supreme science. Distinguished scholars, like Bodin, Hobbes, Sidgwick, and Bryce, had held the same view. But some writers deny this claim to Political Science. They maintain that there can be no such thing as a scientific study of the phenomena of the State and government. They agree with Burke that there is no science of politics any more than there is a science of aesthetics, "for the lines of politics are not like the lines of mathematics. They are broad and deep as well as long. They admit of exceptions; they demand modifications. No lines can be laid down for civil or political wisdom. They are a matter incapable of exact definition." Even Maitland said, "When I see a good set of examination questions headed by the word 'Political Science', I regret not the questions but the title."<sup>13</sup> Sir Frederick Pollock, on the other hand, asserts that "there is a science of politics in the same sense, and to the same, or about the same extent, as there is a science of morals."<sup>14</sup>

11. Robson, W. A., *The University Teachings of Social Sciences: Political Science*, Unesco, p. 19.

12. *The Indian Journal of Political Science*, October-December, 1954, p. 279.

13. Maitland, F. W., *Collected Papers*, Vol. III, p. 302.

14. Pollock, F., *An Introduction to the History of the Science of Politics*, p. 2.

But whether Political Science is really a science or not depends upon what we regard the test of a science. Does a science involve merely systematic reasoning, or must the reasoning be exact and the conclusions clearly defined and subject to no exceptions as in the case of natural or physical sciences? Moreover, does the claim of Political Science to be a science involve the power to predict the political future?

Political Science is neither an exact science nor can it claim to predict the future with certainty, as in History, Economics, or any other social discipline. The results in Physical Sciences, like Physics and Chemistry, give definite results and these remain true under given conditions for all men and in different climes. If there is any variation, it can be tested and explained. But it is not possible to place men in a laboratory as if they were guinea pigs, nor is it possible to impose precise laboratory conditions on the political sphere of real life. Political Science deals with men and it is a living subject matter which can be explained in terms of living human activity. It cannot be expressed in fixed or static formulae. Man is also dynamic and so must his institutions be. They must adjust themselves with the changing demands of man and needs of the times. No institution is today what it was yesterday and what it will be tomorrow, any more than I am myself the same on two consecutive days. It is, therefore, the human element or the livingness of the subject which makes Political Science inexact and indefinite.

Then, in the subject-matter of Political Science is involved the problem of values. All political issues must be explained in terms of moral and ethical standards, or, to put it more precisely, they should be based on justice. From the times of Plato and Aristotle men's ideas of what is just do not agree and the "riddle of social justice" remains unsolved. The endeavour in search of justice will continue in future too and, yet, without any definite agreement thereupon. Consequently, it is impossible for Political Science to attain the same degree of exactness and universal application of its laws as in the physical or even the biological sciences. "There are two words in medicine", a Professor of Medicine said to his pupils, "that you never use. They are 'Always' and 'Never'"—and the same applies to Political Science.

But if by 'science' is meant a systematised body of knowledge the facts of which have been accurately and impartially collected, arranged and classified, through the use of various scientific methods of observation, comparison and analysis, with cautious statements of findings, then, Political Science can claim to be a science. It is true that we cannot experiment with man and political phenomena lack continuity of development. It is also true that students of Political Science differ materially on their methods, principles and conclusions. And when political problems in the last analysis depend upon our conceptions of right and wrong, there has always been and presumably always will be fundamental disagreement over its first principles. But "we can become," as Dr. Finer remarks, "the prophets of the probable if not the seers of the certain." Prediction and absolute certainty are not the goal of Social Sciences. Even Physical Sciences cannot claim to achieve to that extent. The sweeping changes which have taken place in Physics and Chemistry during the past century show how tentative are formulations even in natural science. It might,



on the other hand, be argued that some of the political theories expounded by Aristotle, or John Stuart Mill, or the authors of *The Federalist Papers* "have stood the test of time better than contemporary doctrines of chemistry, for example."<sup>15</sup>

Let it, however, be conceded that hypotheses concerning political behaviour can never be fully verified "because of the complex, shifting and ever changing nature of the political universe." Yet, the political scientist endeavours to read the present in the light of the past and becomes wiser for the future. He tries to systematise his facts, analyses clearly cause and effect, and tries to unfold principles and detect general tendencies. The mass of historical facts and the contemporary data of the actual working of the political institutions are sufficient to enable him to observe, collect and classify general facts. "If the situations are not identical, they are not completely different: there are recognisable similarities." The phenomena of the State, thus, exhibit a certain order, regularity and connection in their sequences. They are the result of the operation of certain fixed laws universal in application. The aim of science is the discovery of universal laws and the laws of science are based on experience and they are verifiable in experience. J. A. Thomson has cogently said that "the aim of science is to describe the impersonal facts of experience in verifiable terms as exactly as possible, as completely as possible."<sup>16</sup> Science tries to understand clearly and completely "what commonsense understands only dimly and partially." In fact, all serious study must be 'scientific' in the sense that "all conclusions must be based on ascertainable facts, and research carried out with the minimum prejudice and emotion and with the maximum of rational enquiry." The scientist must have a passion for facts and his mind must not be coloured by personal bias, that is, he conducts his enquiry in a spirit of scientific detachment.

If this is the aim of science, it is sufficient to justify the claim of Political Science to be ranked as a science, though it is the most inexact of all the sciences belonging to the family of social sciences. James Bryce compared it to an inexact natural science, like Meteorology, as Dr. Alfred Marshall compared Economics with the science of tides. The aim of Political Science, however, is not only to formulate scientific laws of political governance of man, but also to establish a way of life which, according to Aristotle, is the way for the sake of good life. A good life is the art of living together in a spirit of togetherness: a rational conduct of human life, first, as the citizens of a State to which men belong and, then, as members of the common humanity. Peoples of all the States have yet to learn the art of good life in all its aspects and once this art is mastered there will really be a happier and just life. And art is not antithesis to science. It can be based on science.

### METHODOLOGY OF POLITICAL SCIENCE

Political Science is, thus, an organised body of knowledge the facts of which have been scientifically and systematically observed, collected

15. Brown, Bernard F., *New Directions in Comparative Politics*, p. 5.

16. *Introduction to Science*, p. 57.

and classified, and from these facts are formulated and proved a series of propositions or laws which form the basis of the science. These laws are used as a groundwork for further investigation. It was not until the nineteenth century that the phenomena of the State came to be regarded as a proper field for scientific investigation and since then many methods have been suggested and employed. Auguste Comte suggested three principal methods of investigation, viz., observation, experiment and comparison. Bluntschli considered philosophical and historical as the only two methods, which need be used for investigation and correct conclusions. John Stuart Mill recognised four methods: (1) the chemical or experimental, (2) the geometrical or abstract, (3) the physical or concrete deductive, and (4) the historical method. Mill held the first two methods false and placed the emphasis on the deductive and the historical methods only. James Bryce held that observational, experimental, historical and comparative methods were the only correct and proper methods to give conclusive results. Deslandres, a recent French scholar, recognises six methods: the sociological, the comparative, the dogmatic, the juridical, the method of good sense, and the historical method.

Some recent writers have emphasised the importance of sociological, biological, psychological and statistical methods of investigation. The American political scientists significantly recognise and practise psychological method with closer ties to Economics. Great importance is also given to comparative and statistical methods, the latter especially in the study of public opinion. In Great Britain seven different methods are in use: historical, juridical, philosophical, institutional, analytical, observational and sociological. The sociological method endeavours to relate the political system of the country to the social structure, habits, ideas, psychology and customs of the community. Robson advocates the analytical method. Marxist dialectical method is followed in Communist countries. According to Schäff and Eulich the basic principle of Marxist dialectical method lies in postulating the examination of problems in their integrity, that is, in examining phenomena in their interdependence and mutual relations. They observe that in order "to attain knowledge of political reality, the Marxist dialectical method makes use of sociology which is built on a consistent material basis, resorts, in turn, to an analysis of the social process in terms of the property relations which exist in any given society."

There is, therefore, no single method which can come to the rescue of a political scientist and help him to unfold the phenomena of the State and government with some degree of percision. The generally accepted methods of political investigations are: (1) the Observational Method, (2) the Experimental Method, (3) the Historical Method, (4) the Comparative Method, (5) the Method of Analogy, and (6) the Philosophical Method. To these may be added the Statistical and the Quantitative Method.

**The Observational Method.** The observational method was commonly used by the natural scientists in the first instance. If a certain phenomenon is occurring at a particular time and place the scientist will study it. But in Social Sciences its use was discounted and the older generation of political scientists did not generally employ it. Most of them based their

theories on *a priori* assumptions, that is, the drawing of specific conclusions from premises pre-assumed to be infallible. This was the method of deductive logic and political thinkers grounded their theories upon premises taken from the Holy Scriptures, from the works of Aristotle or from other authorities who were supposed to be eminent.

It was only during the Renaissance and particularly as a result of new discoveries that the search for reality prompted political thinkers to observe, collect and analyse facts about the actual workings of the governments and their institutions. Observational method is one of the ways of empirical studies and Lord Bryce was its great advocate. He attached great importance to the study of the problems and institutions on the spot, to investigate their operations and form conclusions therefrom. He visited the United States of America, Canada, France, Switzerland, Australia and New Zealand, studied the people and their countries, closely observed the working of their institutions and formed his own conclusions. He wrote, "The best way to get a genuine and exact first hand knowledge of the data is to mix in practical politics. In such a country as France or the United States a capable man can, in a dozen years, acquire a comprehension of the realities of popular government ampler and more definite than any which books supply".<sup>18</sup> The political investigator, Lord Bryce asserted, must not confine his observations to one single country. His field of investigation should be so wide as to include the political phenomena of all countries, for the fundamentals of human nature are the same everywhere, except the differences in their political habits and temperaments. "The first desideratum for a political scientist," he said, "is to get the fact and then make sure of it. Get it perfectly clear. Polish it till it sparkles and shines like a gem. Then connect it with other facts. Examine it in its relation to them for in that lies its worth and its significance. It is of little use alone. So make it a diamond in the necklace, a stone, perhaps a corner stone in your building". Bryce's two famous books, *The American Commonwealth* and *Modern Democracies* are the result of his labours in pursuit of the observational method.

The observational method is based on direct observation and reflection. It is practical and its utility is obvious. But as Sait has said, "A science of Politics can be developed only through observation, which is more laborious and far more open to error than experiment." Authentication of facts observed is a long and arduous process and what appears to be a fact may not be so or it may be partially borne by facts. Laski has, therefore, correctly remarked that the processes of government "are very like an iceberg: what appears on the surface may be but a small part of the reality beneath". Next, the human part intervenes. The facts analysed may smack, and they very often do, the prejudices of the investigator. Whether he acknowledges the fact or not, he will look on some people and policies as good and on others as evil. Moreover, what we observe is a comparison of contemporary political institutions. It gives no clue to the past and provides no wisdom for the future unless other methods of investigation are employed together with it. It must, however, be noted that increasing use is now being made of this method particularly in India.

18. Bryce, J., *Modern Democracies*, Vol. I, p. 10.



**The Experimental Method.** The experimental method is at best where a given phenomenon can be studied under conditions favourable to the investigation by excluding disturbing agencies. It is observation under conditions arranged by ourselves. But such scientific experimentation is not possible in Political Science, for it deals with man and his political institutions. "We cannot do in Politics," says Lewis, "what the experimenter does in Chemistry.... We cannot take a portion of the community in our hands as the King of Brobdigang took Gulliver, view it in different aspects and place it in different positions in order to solve social problems and satisfy our speculative curiosity." Experiments in Physical Sciences can be tried over and over again till the final and required result is obtained. Experiments in Political Science, on the other hand, can never be repeated. No ingenuity of man can reproduce identical conditions. Political institutions in every country are the logic of its people and their requirements. We cannot have a replica of the English institutions in India. Even if we have them, their success cannot be guaranteed. Analysing the causes of success of direct legislation in Switzerland, Lord Bryce said, the institution is "racy of the soil. There are institutions which like plants, flourish only on their hill side and under their own sunshine."<sup>19</sup>

There is, however, some truth in the oft-quoted saying that man is wiser after experience. We may not experiment in Political Science as we do in a Physical Science, but practical experiments in political institutions are being constantly made, consciously or unconsciously. Every government makes experiments when it adopts a new policy or enacts a new law. Governmental policy changes and laws are amended or repealed if their public utility is not abundantly proved. All this amounts to experiments for the purpose of testing and improving. Dyarchy, for instance, was experimented in the Provinces of India under the Government of India Act, 1919, but its working soon disclosed the inherent defects in the experiment and it was discarded in the Provinces under the Government of India Act, 1935. The Constitution of India is committed to prohibition and some State Governments are experimenting with it, total or partial. The Government of India appointed the Tek Chand Committee to recommend a uniform policy based upon a rational evaluation of such an experiment. The Government of India enacted the Gold Control Order which now stands more or less repealed, because the experiment did not fulfil the desired purpose underlying it. Various States adopted the scheme of separation of executive and judicial functions. The experiment proved a success and the two wings of Government are now separated in almost all the States. Munro describes the British constitution as the mother of constitutions and Parliament as the mother of Parliaments.<sup>20</sup> It means that other countries borrowed from Britain what she was the first to experiment.

By experimental method is, thus, implied what it is based on observation and experience.<sup>21</sup> Its 'laboratory' consists of the sovereign and inde-

19. *Modern Democracies*, Vol. I, pp. 453-54.

20. Munro, W. B., *The Governments of Europe*, p. 1.

21. Lewis, *Op. citd.*, Vol. I, p. 173.

pendent States in which the world is divided. For the political researcher every change in the governmental structure, law or policy has significance as it is the result of experiment. When South Korea was invaded in June 1950, politicians and political commentators urged that the mistake made in 1938 should not be repeated. But while doing so, they were not drawing exact parallels, nor claiming any infallibility in their predictions. They were simply pointing out the existence of certain facts which seemed to them to warrant the assumption that the pattern of 1938 might be repeated, and warned of the consequences if their analysis was correct. "We deal with tendencies," says Harold Laski, "we can predict on the basis of experience. But our predictions are limited by the necessity of recognising that the facts are not within our control. We can influence and attempt and hope; the certainty and precision of the chemist, or even the physiologist, can never be ours."

**The Historical Method.** The historical method supplements the experimental method. Prof. Gilchrist remarks, "The source of experiments of Political Science is history; they rest on observations and experience. Every change in the form of government, every law passed, every war is an experiment in Political Science." The study of Political Science, according to Laski, "must be an effort to codify the results of experience in the history of States."<sup>22</sup> Political institutions grow instead of being made. They are the product of history and to know them what they really are, we must grasp the evolution of all those forces which have moulded and shaped them in their present form. Our conclusions remain uncertain, if they are not built upon historical analysis. Nor can we become wiser for the future. It is only by knowing the past and the present that we can plan for the ideal institutions of tomorrow. Laski has cogently said, "What it is and why it is, it is by reason of its history. Its becoming is the clue of its being and it is from that being that we must wrest its secret."<sup>23</sup> In brief, our traditions and institutions are determined for us by our past. We are the consequences of these traditions and institutions which we did not make and which we can only partially alter. Appeal to history, therefore, is an invaluable aid to the students of Political Science.

Montesquieu, Savigny, Seeley, Maine, Freeman and Laski are some of the eminent exponents of the historical method. Karl Marx found it an exclusive method. He explained the origin of the capitalist society in History and gave it the name of Materialistic Conception of History. But Sidgwick and other followers of the Philosophical School give to the historical method a secondary place for two reasons. First, they maintain that the historical method serves no useful purpose in solving our present and future needs as it refers only to the experience of what the political institutions had been. Every age, it is argued, has its own problems and every problem requires solution relative to the time in which it occurs.

22. Laski H., *The Danger of Being a Gentleman*, p. 36.

23. *Ibid.* Refer to what Sir Frederick Pollock says, "The historical method seeks an explanation of what institutions are and are tending to be more in the knowledge of what they have been and how they came to be what they are, than in the analysis of them as they stand." *An Introduction to the History of the Science of Politics*, p. 11.



Secondly, history is a mere narration of events and it is not concerned with the goodness or badness of such events. Goodness or badness is only determined by ethical or philosophical standards and, accordingly, the philosophical method must precede the historical method.

Sidgwick's arguments are quite convincing. In the historical method superficial resemblances, usually fascinating, but generally misleading, are very often made. In the opinion of James Bryce, the historical investigator is more susceptible to emotional influences and he very often confuses "the personal or accidental factors with the general cause at work." In spite of these well reasoned objections the utility of historical method cannot be discounted. History has now become much more objective. It also justifies goodness and badness of political actions, provided the investigator proceeds with impartial mind free from prejudices and pre-suppositions, correlating economic, geographical or other scientific approaches. Seeley has rightly said, "We must think, reason, generalize, define, and distinguish; we must also collect, authenticate, and investigate. If we neglect the first process, we shall accumulate facts to little purpose, because we shall have no test by which to distinguish facts which are important from those which are unimportant; and, of course, if we neglect the second process, our reasoning will be baseless and we shall but weave scholastic cobwebs."

**The Comparative Method.** The comparative method of investigation is as old as Aristotle. He is said to have studied as many as 158 constitutions and after analysing and comparing them, he arrived at certain definite conclusions. In modern times comparative method has been used by Montesquieu, De Tocqueville, Laboulaye, Bryce, and many others. Recently, the method of comparison has come under intensified discussion. A report by a research panel in comparative Government was published in 1944. The Unesco project, and the hand book it published in *Contemporary Political Science*, at least touched on the question. It was discussed to a considerable extent at the round table on the teaching of Political Science organized by the International Political Science Association in 1952 and in the subsequent report by W. A. Robson.<sup>24</sup> The interest shown on this occasion encouraged the International Political Science Association to devote a particular round table on the study of "comparative Government," which was held in Florence from April 5-10, 1954, followed by a report of Professor Gunner Heckscher.<sup>25</sup> There was agreement amongst the fifty participants in the round table on the importance of studying the comparative Government and the reasons for which such a study was regarded profitable. Professor Gunner Heckscher beautifully summed up the contribution of the comparative method in the development of Political Science itself. He says, "If we regard our field of study as mainly descriptive, comparisons are required to help us refine our tools of description. If we have hopes of establishing a general theory on an inductive basis, we do so only through comparison. If we attempt to test specific hypotheses, this is possible only if we bring in a sufficient number of examples, to be investigated by the comparative method."<sup>26</sup>

24. *The University Teaching of Political Science*, Unesco.

25. *The Study of Comparative Government and Politics*.

26. *Ibid.*, p. 15.

The comparative method aims at the study "of existing political institutions or those which have existed in the past, to assemble a definite body of material from which the investigator by selection, comparison, and elimination may discover the ideal types and progressive forces of political history."<sup>27</sup> By comparison, we accumulate material, arrange and classify it, and by the process of co-ordination and elimination deduce certain results therefrom. It enables us to determine common causes and effects by making a comparative study of the past and the existing political institutions. Lord Bryce compared the working of democracy in different countries and, then, accounted for its merits and defects as a form of government. The Indian Constituent Assembly amply benefited from this method. The Constitutional Adviser to the Government of India visited nearly all the Western countries, studied and compared the working of their political institutions, and placed his conclusions before the Constituent Assembly in order to guide its deliberations. "Comparative studies are the core of any study of 'foreign' Governments. They are of pedagogical importance, especially if we are to gain a reasonably realistic and relativistic view of our own government."<sup>28</sup>

But the use of the comparative method needs great care. Comparative analysis does not have as its guiding principle the assumption that there is one best way of government, which, when discovered, is to be adopted everywhere. There is limited practicability of transferring the fruits of political ingenuity from one country to another. When we compare political institutions with a view to finding out general principles underlying them, we must take into account the differences in the social, moral, intellectual, temperamental, political and economic conditions of the countries concerned or the communities compared. Comparison is most advantageous between countries and people with more or less similar conditions, as, for example, India and Pakistan. It is now generally believed that parliamentary system of government, as obtainable in Britain, cannot work in India on the same lines and with the same ease and facility. This is primarily due to the differences in the temperament and genius of the people belonging to both the countries, their economic and social conditions, their moral and legal standards, and their political training and experience in administration. The comparative study succeeds only when due prominence is given to the human element; their manners, customs, habits and environments. It, then, lessens the dangers of meaningless comparison of "empty form and ossified rituals." Merriam correctly said that like all social sciences, Political Science "can be truly scientific only to the degree in which it contributes to the creation of a science of man." It is also necessary to stress the enormously growing importance of sociological study to the study of comparative method. One of the great contributions of modern American Political Science is, in fact, "that it is proving, . . . , the extent to which co-operation with sociology is possible as well as indispensable to political science in general and especially to comparative studies."<sup>29</sup>

27. Gunner, *op. cit.*, p. 23.

28. Gunner Heckscher, *The Study of Comparative Government and Politics*, p. 15.

29. *Ibid.*, p. 59.



**The Method of Analogy.** Prof. Gilchrist suggests one more inductive method, that of analogy. This method has been made use of by Herbert Spencer. He says that both the State and an organism possess the sustaining, distributary and the regulating system and both exhibit the same process of development. From this analogy, he concluded that the State is an organism. The method of analogy is, no doubt, good and it serves a useful purpose. But analogy is not proof. What analogy leads to is merely a "hypothesis." It gives probability and not certainty and the farther the analogy is carried the more misleading it becomes. The difficulty "of its application in Political Science is all the more marked because of the vast number of circumstances surrounding any given instance."

**The Statistical or the Quantitative Method.** Another method which has recently become increasingly important and is being widely used in the study of political phenomena is the Statistical or the Quantitative method. It attempts to describe and measure in quantitative terms and is especially applied to the study of political parties and public opinion. The statistical technique has also been extended to the study of comparative Governments and International Relations. David Thomson is of the opinion that "until some such statistical and sociological technique is applied to international relations, the science of studying international relations will make little further progress in method."<sup>30</sup>

The analysis of public opinion is, of course, as old as Plato, but as a field of scientific investigation with the aid of statistical tools it is only a generation old. In the immediate background are such writers as Tonnies, Tarde, Le Bon, Wallas and Bryce. But two books, Lawrence Lowell's **Public Opinion and Popular Government**, and Walter Lippman's **Public Opinion** "did much to delineate the field in terms meaningful to American Political Science."<sup>31</sup> Especially following Lippman's work, public opinion has become a field of specialization in the American Universities. The application of statistical techniques to the analysis of various types of political and governmental data has been advanced by Stuart Rice, Louis Bean, Harold F. Gosnell and others. H. Dewey Anderson and Percy E. Davidson have applied the statistical technique to such widely varied fields as voting motivation, occupational mobility as it affects state governmental operations, occupational trends upon a national and local basis, and concentration of economic power and its effect on political power. In some of the Western countries "public opinion polls" or "Gallop polls" are held. "If skilfully framed and conducted, such polls have shown themselves, in Britain as in America, to be capable of a high degree of accuracy. A week before the 1945 elections, the **News Chronicle** "Gallop poll" showed within 1% accuracy the results of the general election."<sup>32</sup>

It is, however, necessary to exercise great care in the collection and use of the statistics. Lowell had aptly said that "statistics, like real pies are good if you know the person who made them, and are sure of

30. *Contemporary Political Science*, Unesco, p. 593.

31. Dwight Waldo, *Political Science in the United States of America*, Unesco, p. 73.

32. *Contemporary Political Science*, Unesco, p. 545.

the ingredients" as "by themselves they are strangely likely to mislead, because unless the subject is understood in all its bearings, some element can easily be left out of account which wholly falsifies the result."<sup>23</sup> To put it rather bluntly there are three kinds of lies, the white, black and statistics—and it is the last kind which is so difficult to nail or counteract. Statistics are manipulated to suit the party purposes and explained to distort the facts for electoral gains and political manoeuvring.

**The Philosophical Method.** The methods of investigation so far considered are inductive methods. These methods start with certain facts which are either historical in their character or are the result of experiment, comparison or observation and, then, certain conclusions regarding the political phenomena are arrived at. The philosophical method, on the other hand, is deductive or *a priori* and its exponents are Plato, Rousseau, Kant, Bosanquet, and Sidgwick. The deductive method implies reasoning or developing particular conclusions from a number of general principles or propositions which are admitted or assumed to be true. The philosophical or *a priori* method is, thus, reasoning from cause to effect, from a general principle to its consequences. In Political Science this method of investigation "starts from some abstract original idea about human nature and draws deductions from that idea as to the nature of the State, its aims, its functions and its future. It then attempts to harmonise its theories with the actual facts of history."

The scope of Political Science is, to some extent, speculative, as it includes the study of what the State *ought to be*. But what ought to be is only an ideal to be attained. An ideal is not a reality. It is a thing of imagination. Philosophers swayed by their idealism soar high in the realm of uncertainty and create a world of their own imagination, which is very often devoid of facts and reality. Plato, in his *Republic*, and Sir Thomas Moore, in his *Utopia*, conceived of that ideal State which is contrary to the facts of history and human nature. Such a philosophy degenerates into a mere ideology with dangerous results. It is true that our main concern is to strive for an ideal State, but while doing so we should not be wild in our speculation. 'Ought to be' must, as far as possible, coincide with 'what it can be'.

**Conclusion.** The real method of Political Science is an evaluative analysis: uniting description with theory. People do not stop with analysis. They also pass judgment on the political process in terms of abstract ideals many of which have an ethical content. For example, if a political scientist studies an institution like the British Parliament, he will, of course, collect all pertinent factual data about that body—about its historical growth, its functions, membership, organisation, relations with other branches of government, and so on—and he will present his information in a systematic form. But this much does not exhaust his task. He may have to give answers to a host of additional questions connected with his inquiry. Are the functions of Parliament clear-cut and appropriate? Does Parliament find sufficient time to do its job efficiently and satisfactorily? Are the members as competent as their responsi-

33. Lowell, A. L., *The Philosophy of Politics, American Political Science Review*, Vol. IV, p. 10.



bilities demand? Are the members well informed and they adequately perform their duties? Do they place special interests before the public good? What is the position of the private members? Such questions cannot be avoided in the analysis of Parliament and they cannot be adequately answered without reference to certain ideal objectives and criteria. The attempt at answering them is an evaluation and here the analytical method combines the philosophical method.

Similarly, a political philosopher does not and cannot altogether exclude a concern for institutions however ethereal his end, however celestial his aspiration. "Since political achievement is for men and through men," says Dr. Finer, "political achievement is through institutions, which are nothing but men acting more or less deliberately in a fairly durable concert for the attainment of a considered complex of ends." The political philosopher begins with an end and then finds ways and means, that is, institutions. Plato started with his ideal of justice and established a systematic philosophy of social relationships ordered by government. Hobbes was mortally fearful of strife, disorder and death and he believed that monarchy was the most stable and orderly kind of government which could ensure peace and order and he used the doctrine of Social Contract as a weapon of defence for absolute government and as a justification of Stuart despotism. John Locke proceeded from the pursuit of happiness and tolerance and justified the need of government by consent. "The happiness and the security of the individual," writes Dunning, "figure, not as essential to the perpetuity of a government, but as the end for which alone government is ever called into existence."

The study of Political Science, therefore, springs from both inductive and deductive methods. Induction and deduction are not incompatible methods; they supplement each other. Realism must be blended with idealism. If realism does not partake of idealism, we cannot march towards the goal of an ideal State. "The genuine historian," Gilchrist rightly remarks, "must recognise the value of philosophy, and the true philosopher must take the counsel of history. The experiences and phenomena of history must be illumined with the light of ideas."

It must, however, be remembered that no methodology of Political Science can lead to true conclusions unless we take human nature into account. After all the State exists for man and it endeavours to cater for his good. Man is the central subject of our study and we must go to his psychology to find out the really correct solution of his problems. Hitherto political thinkers had regarded man as a rational being and accepted this nature of man as a dogmatic truth and consequently the starting point of their investigations. Recently, Graham Wallas, in his book *Human Nature in Politics*, has revolted against this traditional assumption of human nature. Man, according to Graham Wallas, is hardly rational in his behaviour. "If, indeed, a man were followed," he writes, "through one ordinary day, without his knowing it, by a cinematographic camera and photograph and if all his acts and sayings were produced before him next day, he would be astonished to find how few of them were the result of a deliberate search for the means attaining ends." Whether we

34. Gilchrist, *Principles of Political Science*, p. 9.

35. *Human Nature in Politics*, p. 126.

agree with Graham Wallas or not, the importance of psychology as a clue to political behaviour cannot be denied. Nor must the institutions of government be regarded as eternal or petrified. "Institutions are," as Dr. Finer says, "nothing but useful or useless habits: they were acquired for a purpose, and purpose changes. The world of political reality is not the printed world of books, or of statutes, or of administrative rules and orders. The cut and dried is not political."<sup>36</sup> Institutions are really how they are worked and their actual working is subject to the political behaviour of man, that is, what men really do when faced with situations rather than what their alleged opinions or feelings are.

### RELATION OF POLITICAL SCIENCE TO OTHER SOCIAL SCIENCES

Sidgwick says that it is always useful for the proper understanding of any subject of inquiry to establish its relationship with other sciences and "to see clearly what elements of its reasonings it has to take from them and what in its turn it may claim to give them." Political Science is deeply related to all other social sciences, because knowledge that is gained about any phase of human conduct, about the institutions that men build, or the ideas to which they respond in the mass, cannot fail to be of use in similar fields of inquiry. Each social science—sociology, anthropology, history, economics, ethics, psychology, law, geography and political science—supplements and fortifies the rest. If we divide them into different sciences, they are distinctions within a unity as all aim at the study of man in society. All are inter-dependent and inter-related. Each contributes importantly to the advancement of the other.

**Political Science and Sociology.** Sociology is a parent science of all the social sciences. It is the science of society viewed as an aggregate of individuals or "it is the science of men in their associated process." It deals with social development in general and analyses and describes social life in all its phases and complexities through all ages and climes. Sociology may, thus, be defined as the science of the origin and development, structure and functions of social groups, their forms, laws, customs, institutions, modes of life, thought and action and their contribution to human culture and civilisation. It seeks to discover the general principles underlying all social phenomena and social relationship and to establish laws of change and growth in social changes.

Political Science and Sociology are so intimately connected that the "political is embedded in the social and if Political Science remains distinct from Sociology, it will be because the breadth of the field calls for the specialist, and not because there are any well-defined boundaries marking it off from Sociology."<sup>37</sup> They are mutually contributory. Political Science gives to Sociology facts about the organisation and functions of the State, and obtains from it knowledge of the origin of poli-

36. *Theory and Practice of Government*, p. 5.

37. Garner, *op. cit.*, p. 29.



tical authority and laws which controlled society. [The State in its early stages was more of a social than a political institution, and Prof. Giddings is of the opinion that "to teach the theory of the State to men who have not learned the first principles of sociology, is like teaching astronomy or thermodynamics to men who have not learned the Newtonian law of motion."]<sup>38</sup> A political scientist must be a sociologist and a sociologist ought to be a political scientist. For example, the institution of marriage by itself is an element in the social life of man and is, therefore, the concern of Sociology. But if a code of marriage, like the Hindu Marriage Act, is enacted to regulate it in a particular way, it at once falls within the domain of Political Science as it comes within the scope of organised control and obedience. The Hindu, the Sikh, the Muslim and the Christian communities by themselves are the subjects of Sociology, being parts of the Indian society, but when they quarrel among themselves and their quarrel flares up into communal riots, it not only represents the pathological side of Indian social life, but also a problem of deep political concern to prevent their recurrence and to remove the causes of conflict in order to weld them into a patriotic nation. Likewise, if we study revolutions, we must take into account their social as well as their political causes as appearing in different environments. The analysis of political parties cannot be divorced from their relationship to social classes, and the sociology of the electorate solves the difficulties emerging from the basic democratic mechanism.

In spite of this close affinity between Sociology and Political Science, the study of both the sciences is quite distinct and their problems are by no means the same. Giddings has aptly said that the province of Political Science is not co-extensive with "the investigations of society but that the lines of demarcation can be drawn."<sup>39</sup> Sociology deals with man in all his varied social relations and in all forms of human associations. Its study is not confined to one aspect of man alone. Political Science, on the other hand, is a study of the political governance of man and it is a specialised branch of Sociology. It has, therefore, a narrower and more restricted field to cover. Secondly, the political life of man begins much later than his social life. Sociology is, accordingly, prior to Political Science. Thirdly, Sociology embraces the study of organised and unorganised communities and the conscious and unconscious activities of man. The province of Political Science is the political organised society and conscious political activities of man. Finally, Political Science aims at the past, present and future determination of political organisation of mankind whereas Sociology is the study of various social institutions that exist or have hitherto existed. It does not and cannot predict about the future of society and social relationships. Its study is empirical and has no philosophical trend to follow.

**Political Science and Anthropology.** Anthropology is a science which deals with racial divisions of man, his physical character, his geographic division, his environmental and social relations, and his cultural development. It is, accordingly, a science which studies mankind in relation to

38. Giddings, *Principles of Sociology*, p. 37.

39. *Ibid.*, p. 35.

physical, social and cultural development. The contribution of Anthropology to Political Science is considerable and modern researches in the racial divisions, habits, customs, and organisations of primitive man help us to know the real origin of the State and development of various political institutions. There are two common proverbs which prove the affinity between Anthropology and Political Science. The first is: There is something run in the blood of man; and the second: Man is the shuttlecock of his environments. The political behaviour of man is greatly influenced by his racial origin and the environments in which he lives. The theory of nationalism as preached by Hitler and his dogma of the superiority of the Aryan race solve many a knotty problem of recent political thought. Finally, race unity is one of the strongest bonds of nationality, and geographic unity is another important factor which fosters the sentiment of nationality.

We seek the help of Anthropology to prove that early society was communal in character, that is, its basis was the **group** rather than the **individual**, whom we now accept as the unit of our society. Anthropology also tells us that in early stages of the development of society, temporary marriage was the rule rather than the exception. But such a condition of society could not last for long and the need for regulating marriage was felt. With the regulation of marriage civilization advanced and people permanently settled down as territorial units. Thus, Anthropology greatly helps the study of Political Science. Without a good knowledge of early societies, their laws, customs, manners and modes of government, we cannot understand accurately the modern institutions and the political behaviour of the people.

**Political Science and History.** The relationship between Political Science and History is very close and intimate. Sir John Seeley expressed this relationship in the following couplet—

“History without Political Science has no fruit,  
Political Science without History has no root.”

Seeley's emphasis seems to be rather exaggerated, yet no one can discount the dependence of the two sciences on one another. The State and its political institutions grow instead of being made. They are the product of history and in order to understand them fully one must necessarily know the process of their evolution: how they have become what they are, and to what an extent they have responded to their original purposes. All our political institutions have a historical basis. History furnishes sufficient material for comparison and induction enabling us to build an ideal political structure of our aspirations. In the absence of historical data the study of Political Science is sure to become entirely speculative or a **priori**. And a **priori** Political Science, as Laski observes, “is bound to break down simply because we never start with the clean slate.” The writings of historians, in brief, form a vast reservoir of material which a student of Political Science can analyse into “meaningful patterns” which guide him in understanding the present and outlining the future. Moreover, with its chronological treatment, history offers to the students of Political Science a sense of growth and development and, thus, affords insight into the social changes.



History, in its turn, has much to borrow from Political Science. Our knowledge of history is meaningless, if the political bearings of events and movements are not adequately evaluated. The history of the nineteenth-century Europe, for example, is an incomplete narration of facts unless full significance of the movements, like nationalism, imperialism, individualism, socialism, etc., are brought out. Similarly, the history of India's independence is devoid of all logic, if we do not sufficiently explain the political result of the rise of the Indian National Congress; the Muslim demand for separate electorates; the benevolent despotism of the Government of India Act, 1909; Montague's August 1917 Declaration; the Reforms of 1919 and experiment with Dyarchy; the recommendations of the Simon Commission; the deliberations of the Round Table Conferences; the Communal Award; the Government of India Act, 1935; the implications of the Atlantic Charter; 1942 Quit India Movement; Cripps' Proposals; Simla Conference; declarations of Lord Wavell and Pethick-Lawrence; the Cabinet Mission Plan; June 3, 1947 Announcement; and the Independence Act, 1947. "Political Science," according to Lord Bryce, "stands midway between history and politics, between the past and the present. It has drawn its material from the one, it has to apply them to the other."

Both Political Science and History are, thus, contributory and complementary. So intimate is the affinity between the two that Seeley maintained: "Politics is vulgar when not liberalised by History, and History fades into mere literature when it loses sight of its relation to Politics." Separate them, says Burgess, and the one becomes a cripple, if not a corpse, the other a will-o'-the-wisp.

It does not, however, mean that Political Science is a beggar at the door of History. Nor does it mean, as Freeman says, "History is past politics or that politics is present history." Political Science is, undoubtedly, dependent on History for its material, but it supplies only a part of the material. History is a chronological narration of events including wars, revolutions, military campaigns, economic upheavals, religious and social movements, and the rest. All this material is not required by Political Science. The main concern of the political scientist is to study the evolution of the political institutions and the facts which bear, directly or indirectly, on the State and government. Political Science, thus, selects facts out of History. We are not so much concerned with the causes of the Revolution of 1688 in Britain as we are concerned with the advent of limited monarchy in that country and the beginning of responsible form of government. Likewise, we are not interested, as students of Political Science, with the causes of World War II and the strategy of the fighting powers. Our interest is to study and evaluate whether World War II was in reality a war of Democracy vs. Dictatorship, and whether it fulfilled the purpose for which it was fought. We are also interested in the shape of things that came over in the post-war political structure of the world as a result of this War.

Furthermore, History deals with concrete and matter of fact things. It presents to us not only facts, but the casual connection between the facts. Political Science is speculative as well, since it deals with what the State ought to be. This speculative character of the State necessi-

tates the consideration of abstract types of political institutions and laws. History has hardly anything to do with this aspect of Political Science. Finally, the historian's task is not to pass moral judgments, but the political scientist is bound to do so. It is here that Political Science joins hands with Ethics and parts company with Sociology, History and Economics.

The conclusion is obvious. Political Science and History are two distinct subjects with their separate problems, yet they have a common subject in the phenomena of the State, and, as such, their spheres touch at many points and overlap at others. Leacock succinctly remarks that some of History "is part of Political Science, the circle of their contents overlapping an area enclosed by each."

**Political Science and Economics.** Till recently, Economics was regarded as a branch of Political Science. The Greeks called Economics by the name of Political Economy. Locke's **Second Treatise of Civil Government** discusses topics that nowadays would be considered the province of Economics. Adam Smith, the English classical economist, in his famous book, **The Inquiry into the Nature and Causes of the Wealth of Nations**, refers to two important objects of Political Economy: to provide sufficient revenue for the people, and to supply the State, or what he calls commonwealth, with a revenue sufficient for the public administration. Without clinching the matter, he summed up that political economy "proposes to enrich the people and the sovereign."

Modern economists do not agree with the older point of view. They regard Economics as a separate science, which seeks to inquire how man gets his income and how he uses it. Dr. Alfred Marshall, the celebrated modern economist, considers it "on the one side the study of wealth and on the other and more important side a part of the study of man." Its scope is the study of human welfare and includes a discussion on Consumption, Production, Exchange, and Distribution—the four departments, which cover the study of Economics.)

In spite of its treatment as a separate science there is now no difference of opinion that Political Science and Economics are auxiliary to one another. Man in society is a common factor in the study of both these sciences and it is the welfare of man and society for which each strives. The study of both Political Science and Economics, therefore, is directed to the same common end. (The welfare of man can only be obtained under conditions of an orderly society) because both are inseparable. It is the function of the State to secure these conditions so that every individual gets an opportunity of pursuing his activities, economic activities, of course, preceding the rest.

But no State can remain content to provide mere conditions of peace and order. (The purpose of the State is to create that atmosphere which may be conducive to the good life of man and to give all an equal opportunity for growth and development) (The State performs certain functions in order to achieve its purpose. It is one of the important functions of the State to see what its citizens consume) Every State is vitally concerned with the health of its people as the people are the health of the State. The weak, the infirm, and the destitute cannot be good citizens and a



State inhabited by such people is socially, economically, and politically a cripple. It is, accordingly, the duty of the State to see that its nationals get sufficient and wholesome food to eat. It must also see that the people are adequately provided for, especially during times of emergency, with the requisite necessities of life. At the same time, the State may, for reasons of health of the people, either prohibit or restrict the use of certain commodities like liquor and other intoxicants.

It also becomes necessary for the State to see how commodities are produced and the nature and conditions of their production. For example, the Government of India is now making ceaseless efforts for growing and producing more as the existing scale of production does not keep pace with the total demand of the country. When demand exceeds supply conditions of scarcity are created and prices go up. Rising prices cause distress among the masses and throw out of gear the orderly conditions of society. It is the duty of the State to remove conditions of distress and steer the people clear of economic difficulties. But no country does produce only for its internal needs. Some goods it cannot produce and imports them from other countries. Others it produces advantageously and in abundance. It is for the State to determine its import and export policy and such a policy influences the scale of production.

(The producer of one commodity is the consumer of another commodity. No man produces everything for himself. He must rely upon others and exchange with them his surplus goods. But goods are not exchanged for goods. A system of barter is highly inconvenient and money economy has taken its place. Money is now the medium of exchange and the measure of value. It is the function of the State to coin money and regulate it.) The total amount of money in the hands of the people affects prices. Stable prices are the need of every State. The government carefully watches fluctuations in prices and determines whether more or less money should circulate. Similarly, banks, too, play an important role in controlling the price level. Paper currency of a modern State is issued by its Central or Reserve Bank. Central Bank may either be a State-owned bank or the result of a private enterprise. But whatever it is, a Central Bank must necessarily be the creation of a special Act of the legislature. Moreover, economic prosperity of every country depends upon the soundness of its banking organisation. It is, accordingly, within the jurisdiction of the State to regulate the functions of banks by necessary laws.

The most baffling problem which confronts every country is that of distribution. In Economics, under the heading distribution, we study how the landlord, the worker, the capitalist, and the organiser are paid for the work each does in the field of production. But the capitalist society in which we live, with its system of production and distribution, has brought about uneven distribution of wealth. The theory of Socialism aims at bringing about that political structure of society where the national wealth of a country is most evenly distributed and one section of society does not thrive at the cost of the rest. The theories of Individualism and Socialism, indeed, illustrate better than any other the interaction of Political Science and Economics.

Political and economic conditions, therefore, act and react on one another. As a matter of fact, the solution of many of the economic problems must come through political agencies and the major problems of every State are economic in character. World War II was characterised as a war of democracy against dictatorship. But the causes of the War were really economic. The rise of Nazism was also due to the economic crippling of Germany by the victorious Powers after World War I. The failure of the League of Nations may be accounted for in the policy of economic aloofness and economic self-sufficiency to which every member-State steadfastly clung after World War I. Britain's political policy in India, and her reluctance to grant independence to Indians was more an economic expediency rather than a political advantage. The burning questions of present-day politics, viz., government control of industries, the relations of the State to industries, its attitude towards labour and capital, and a host of other similar problems, are all economic questions intertwined in the political issues. The cry that economic democracy should precede political democracy has revolutionised the political structure of every State. One may even say that the whole theory of government administration is largely economic in its approach when seeking to interpret matters concerning the "Welfare State", public financial policies and relationships between government and private enterprise. When government itself undertakes production it performs purely an economic function.

A good government, in brief, judiciously plans for plenty and it is judged in terms of specific economic achievements, that is, by the harsh realities of administrative performance, by the production of food and arrangements for its distribution at a reasonable price, by the growing production and equitable distribution of essential commodities, by the growth of employment opportunities, by the timely and efficient completion of development projects and by the judgment of their priorities."

**Political Science and Ethics.** Ethics deals with morality and formulates rules which should influence the behaviour of man while living in society. It investigates the rightness or wrongness of man's conduct and prescribes ideals to which he should direct his efforts. The line of demarcation between Political Science and Ethics is quite distinct. Though both Political Science and Ethics aim at the noble and virtuous life of man, yet the former is primarily concerned with the political governance of man whereas the latter refers to man's conduct and morality; that is, whereas Political Science deals with the political order, Ethics deals with moral order. Ethics also justifies man's conduct and in the last resort touches what that conduct ought to be. Political Science has nothing to do with it. The laws of the State prescribe only the way of life and are concerned with the external actions of man. Moral laws prescribe absolute standards of right and wrong, justice and injustice, but the laws of the State follow standards of expediency. What a law prohibits may not be an immoral act. Finally, Political Science is concerned with man as a citizen. Ethics is concerned with man as a man and, as such, it is prior to Political Science.

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40. Speech of S. G. Barve, Minister, Maharashtra Government, at the Indian Institute of Public Administration, New Delhi, Sept. 25, 1964. *The Sunday Standard*, New Delhi, Sept. 27, 1964, p. 2.



But a political idea cannot be divorced from an ethical idea. (Man can only pursue his moral ends while living in the State. Aristotle rightly said that a good citizen is possible in a good State and that a bad State makes bad citizens. He further maintained that while the State comes into existence for the sake of life, it continues to exist for the sake of good life. Good life is the end of the State and all political problems revolve around it. What is morally wrong cannot be politically right, because there cannot be a good State where wrong ethical ideals prevail.)

So close is the relation between Political Science and Ethics that Plato and Aristotle hardly distinguished between the two. The Greek philosophers, in fact, laid more stress on the moral side of the State. Plato's **Republic** is as much a study in Ethics as it is in Political Science. Machiavelli was the first to distinguish between the two and made Political Science independent of Ethics. He also differentiated between public morality and private morality. Hobbes, an English philosopher, followed Machiavelli in his arguments and reasonings. Kant, on the other hand, said, "True politics cannot take a single step forward unless it has first done homage to morals."

The modern view is that there is an intimate relation between Political Science and Ethics. In a paper submitted to the Unesco project "Methods in Political Science", Thomas I. Cook observed, "I urge, finally, that the most glaring need of the social sciences today is to relate ethical concepts, in their general outline long discovered and scientifically verified, to at once the methods and results of modern sociological investigation; to determine the proper sphere of the methods; to winnow and relate in systems, the results. I add here that in political science this need is specially obvious." This approach seemed to him the only one which promised an effectively unified system of Social Science. "within which political science may receive a defineable place, fulfil an intelligent role, possess clear scope and function, and consequently develop appropriate methods and relevant special techniques."<sup>41</sup> When the end of the State is to create that atmosphere in which man can reach the full stature of his personality, the proper sphere of the functions of the State cannot be determined without moral considerations. The doctrine of International legal values or International ethics cements the principles of International Law and their binding nature. Professor Ivor Brown says, "Politics is but ethics writ large. Ethical theory is incomplete without political theory, because man is an associated creature and cannot live fully in isolation; political theory is idle without ethical theory because its study and its results depend fundamentally on our scheme of moral values, our conceptions of right and wrong." Moreover, Political Science is concerned with what the State ought to be. "The great question," in the words of Lord Acton, "is to discover, not what governments prescribe, but what they ought to prescribe."

A lasting contribution to Political Science is Gandhi's plea for spiritualising politics. "There are no politics," said Gandhi's "devoid of religion", and Gandhi's religion consisted in truth and love. Wherever there was truth and love there was non-violence, non-attachment and, thus,

41. *Contemporary Political Science*, Unesco, p. 76.

even-mindedness, i.e., action without the desire for results. Gandhi, in brief, desired to moralise man and society. He, then, emphasised that moral means must be adopted to achieve desirable results. As the seed, so is the tree, Gandhi declared.

The justification, therefore, of what the State does is to be sought in the moral values it helps us to realise, and it ought to provide for attaining the ideal end; the highest goal of man's life. It means that Political Science is conditioned by Ethics. But the main body of material with which the two sciences deal is distinct.

**Political Science and Psychology.** Psychology is the science which deals with the behaviour of man and elucidates what he actually does. It enquires into the mind of man and his behaviour, both as an individual and in groups and explains the motives of human action. It seeks to determine how far human conduct is rational or instinctive or traditional. Political Science, which deals with political relationship of human beings, cannot ignore the psychological effects. The State and its political institutions are the products of human mind and can best be understood in terms of the mind. Theories about political conduct that are not grounded in an adequate psychology are apt to be defective. This has been well shown in some of the contributions that modern social psychology has made to Political Science. Barker says, "The application of the psychological clue to the riddles of human activity has indeed become the fashion of the day. If our forefathers thought biologically, we think psychologically."

The affinity between Political Science and Psychology has been greatly emphasised during recent times. Tarde, Le Bon, MacDougall, Wallas, and Baldwin are the prominent writers who have given psychological explanations of almost all the political problems. They ascribe the unity of the State to psychological factors and determine the form of government in a country and the laws obtainable therein as the result of the temperamental habits of the people. Political traditions and institutions, they say, are what human mind has made them. Bagehot, in his **Physics and Politics**, explains the successful working of the constitutional system of government in Great Britain in terms of the psychology and the genius of the people of that country. "Government to be stable and really popular must," in the opinion of Dr. Garner, "reflect and express the mental ideas and moral sentiments of those who are subject to its authority; in short, it must be in harmony with what Le Bon calls the mental constitution of the race." In the democratic processes the part played by social psychology is, thus, subtle.

There can be little doubt that the psychological approach to problems of Political Science is very valuable. Political Science has hitherto been much under the sway of philosophy divorced from the realities of human nature. It assumed certain facts about human nature and continued its reliance thereupon, but without testifying their correctness. The result had been an inaccurate analysis and estimation of political institutions and the political behaviour of man. We need, therefore, "to reinvigorate our minds from the wells of direct observation." We cannot go very far in our studies of Political Science unless we fully know



and appreciate the way in which human beings behave as individuals and members of society under different influences.

It does not, however, mean that all political problems have psychological explanations to offer. The areas of study in Political Science differ significantly in the extent to which they have thus far been subjected to the behaviouralist approach. Its penetration is uneven. The area which has been subjected to the greatest influence is probably that of public opinion, voting and elections, political parties and pressure groups, international relations and public administration. Foreign and comparative government probably stand in the middle while its affect is the least in public law, jurisprudence, and judicial affairs. Moreover, Psychology does not concern itself with moral values. It does not say anything about what the State and its institutions ought to be. Furthermore, the psychologist "seeks to explain life in terms of savage instinct, and social psychology leads us to explain the higher by the lower." This does not seem to be the correct evolutionary method. The right procedure is to explain the lower by the higher. "Man explains the monkey, and not monkey the man." It is, therefore, not logical to explain civilised life by the conditions of primitive times. It is a bad argument that the thing is final because it is primitive.

MacDougall and other psychologists explain the origin of instincts that operate in society. They do not, however, explain how and why these instincts arise in society. Finally, according to Catlin, Psychology is concerned with mental acts which must be considered in relation to the observable individual mind. But Political Science is concerned with "the impulsive or willed" relations of social beings.

**Political Science and Jurisprudence.** No less close and no less ancient is the connection between Political Science and Jurisprudence, the science of law. The former is the study of the State and Government whereas the latter is the study of law. If human beings are to live a life of togetherness and safeguard the existence of community itself, they must accept certain rules of conduct. The rules governing the society may be few or many. They can range from a few primitive traditions, handed down orally from one generation to another, to the whole complex set of constitutional and governmental regulations which we associate with the modern State. The regulations of the State are called laws and these are formulated, administered and enforced by the agency of the State, the Government. Every state, no matter what its form of Government, develops its own constitutional law. Similarly, every political philosophy embraces or implies a jurisprudence. From a social point of view, laws must be influenced by their environments. As is the structure of society, so is the content of laws. In a community of large land-owners the laws will not be the same as in a country of peasant farmers. Similarly, the laws governing private property and conditions of labour will be different under a capitalistic pattern of society and a socialistic one. The constitutional law of a democratic government basically differs from a dictatorship.

Strictly speaking, Jurisprudence is a sub-division of Political Science as it is the State that creates and maintains conditions of law. But it is now treated as a separate study because of the vastness of its scope

and its specialised study of law. Moreover, law is concerned with classes of persons and classes of situations in general, and often in legal terms. Similarly, law may establish fictions that are convenient as working formulae, though they may have no bearing on actual facts. A lawyer's approach is normative whereas the approach of a student of Political Science is both normative and descriptive. This is how the Political Scientist relates the subject-matter of his study with the real life and thereby corrects the distortions of legalism.

**Political Science and Public Administration.** Public Administration deals with the administrative activities of government and Prof. Pfiffner defines it "as the co-ordination of collective efforts to implement public policy." It covers everything the civil agencies of government do, or could do, to help the body politic attain its purpose. Public Administration is really a part of Political Science, though it is now regarded and accepted as a separate subject of study. This dichotomy arose because of the two senses in which the term public administration was used in the nineteenth century. In a broader sense, public administration referred to the work involved in the actual conduct of the affairs of government regardless of the particular branch concerned. In a narrow sense, it referred to the operations of the administrative branch only with a defined function of enforcing the policy as distinct from policy determining function. The policy determining function was deemed to be the political branch of government whereas the policy enforcing function is the administrative branch. This distinction between the two branches of government led public administration to be regarded as a separate subject of study. Goodnow, accordingly, asserted, "The fact is . . . that there is a large part of administration which is unconnected with politics, which should be relieved very largely, if not altogether, from the control of political bodies. It is unconnected with politics because it embraces fields of semi-scientific, quasi-judicial and quasi-business or commercial activities of work which has little, if any, influence on the expression of the true will."

But this is exactly not so. Administration is, indeed, only a means to the attainment of the objectives of the State. While discussing the purpose and scope of Public Administration, Dr. Leonard D. White says, "The immediate objective of the art of public administration is the efficient utilization of resources at the disposal of officials and employees. In their broader context, the ends of administration are the ultimate objects of the State itself—the maintenance of peace and order, the progressive achievement of justice, the instruction of the young, protection against disease and insecurity, the adjustment and compromise of conflicting groups and interests—in short, the attainment of the good life." This similarity in the ends of Public Administration and Political Science, particularly in the context of a democratic government and a Welfare State, made it possible in the thirties of the present century the revaluation of the relationship between the two. It is now generally agreed that "the attempt to demarcate clear-cut functions of government is impossible. Government is a continuous process. It is true that the process contains

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42. White, L. D., *Introduction to the Study of Public Administration*, p. 3.



es. Legislation is one phase, administration another. But these are wed together and at certain points become indistinguishable." The distinction between policy determining functions and administrative functions is too hazy, for, as Prof. Herbert Simon says, the whole process of government and administration is one of "decision-making". Prof. Homer Durham goes to the extent to accept the concept of "Administrative Poli-

This is, again, an extreme view. Yet, it is incorrect to assert that Political Science and Public Administration are separate and autonomous structures or processes. "To argue," as Dr. White says, "that they should be separate and independent is hardly defensible, given the nature of democratic government." Even the traditional concept of civil service neutrality is undergoing a radical change. "The concept," writes Mr. S. Lall, "is being rapidly transformed, without a conscious realisation, from a negative doctrine of political sterilization and neutrality to a positive, non-partisan participation in the management of the country's affairs." Administration today is no longer just the execution of policy; it reacts upon policy and actively participates in its making.

**Political Science and Geography.** It is maintained by certain writers that geographical and physical conditions greatly influence the character, the national life of the people, and their political institutions. Aristotle was of the opinion that without geography neither political nor strategical wisdom can go far. Bodin was the first modern writer who dwelt upon the relationship between Political Science and Geography. Rousseau tried to establish a relationship between the climatic conditions and the forms of government. He argued that warm climates are conducive to despotism, cold climates to barbarism and moderate climates to a good polity. Montesquieu, another French scholar, also emphasised the influence of physical environments on the forms of government and liberty of the people. But Buckle excels all. In his *History of Civilisation* he maintained that "the actions of men, and therefore of societies, are determined by a reciprocal interaction between the mind and external phenomena." He asserted that the actions of the individuals and societies are determined by the physical environments, particularly climate, food, soil, and the "general aspects of nature." In short, Buckle repudiates the long accepted idea that the free will of man determines the action of individuals and societies.

It is axiomatically true that geographical location is an important factor in moulding the destiny of every State, and it greatly influences its internal and international policies, and political institutions. And to understand the actual impact of geographical factors on the political life of a nation, particularly in relation to its foreign policy, a new subject of study, geo-politics, has emerged. Thus, an island nation may more readily become a moral power, and a nation with rich natural resources may become more powerful in world politics. The nation controlling the Suez canal or the Panama canal becomes by that very fact extremely important to other nations. The geographical position of Germany, locat-

ed as she is in the centre of Europe and without natural boundaries, is a compelling reason for her to remain a great military power. "Our historico-political destiny," wrote Professor Hintze, "lies in our geographical position".

It is really no exaggeration to say that geographical conditions always influence in considerable measure the determination of national policies and to some extent the character of the political institutions. Bryce has aptly said that "in any country physical conditions and inherited institutions so affect the political institutions of a nation as to give its government distinctive character." The obvious reference is to Great Britain and Switzerland.

**Political Science and Biology.** Biology deals with animal-life and its evolution. Herbert Spencer is the most prominent exponent of the biological conception of the State, although the theory is as old as Plato. His brief and simple explanation is that the State is like a biological organism in all its essentials. It is the product of evolution and is subject to the laws of birth, growth and decay. Just as in the case of an organism there is mutual dependence of the parts, so are the individuals who constitute the State. Spencer also tried to establish that like the three parts of an organism—the sustaining, the distributary and the regulating systems—the State, too, has three systems.

There are two views on the relationship between Political Science and Biology. Some writers argue that the State is an organism; others maintain that the State is like an organism. One may reject the assertion that the State is an organism, but it must be admitted that the State in its unity is like an organism; it has a collective life. The analogy, however, should not be extended beyond this, lest, in the words of Lord Acton, we may come to grief in which analogies, metaphors and parallelisms generally lead to.

**Political Science and Statistics.** With the advance in the statistical theory and method and the recent tendency toward quantitative measurements in social situations, the relationship between Political Science and Statistics has become close and deep. The quantitative evaluation of political and administrative phenomena is regarded by political scientists as an indispensable instrument of knowledge. The statistical approach is usually employed in conjunction with other methods. Beatrice Webb records in her autobiography, "I had learnt the relation between personal observation and statistics..., though, I never acquired the statistical instrument because I had not the requisite arithmetic. I became aware that every conclusion derived from observation or experiment had to be qualified as well as verified by the relevant statistics."<sup>44</sup>

There is now a school of opinion which describe statistics as a branch of Political Science. But this is not correct. Statistics is a separate field of investigation in itself, requiring experts to make applications of the method. Yet, it cannot be ignored that the operation of cause and effect is made convincingly concrete and definite in many instances by the use of statistics when the ordinary methods of observation and speculation fail

44. Beatrice Webb, *My Apprenticeship*, pp. 339-40.



to give a true reality involved therein. As Wilson observes, "While a statistical result does not provide an ethic or a norm to be embodied in policy, once the policy has been supported by rational conclusions as to what men desire of political society, statistics is invaluable in attaining with the result."<sup>45</sup> Modern governments essentially depend upon the statistical material and the data it provides in solving very many political riddles. With a Welfare State throwing its full weight on planning, statistics and its extensive use has become indispensable and every department of Government keeps its own statistical cell and the administration is centred around the statistical results. Legislation aimed at must be guided by statistics and the various aspects of the welfare of the people, for example, taxation and expenditure policy, trade, natural resources, employment, social conditions in general, as vice, crime, illiteracy, population, etc., have a statistical interpretation. Whatever be the utility of statistics and its importance in most forms of political investigation, it must be remembered that statistics may show the failure of a given political or legislative project, but it does not establish the futility of the policy.

### SUGGESTED READINGS

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|----------------------|--|
| Abraham Kaplan       | : <i>Power and Society.</i>  |
| Appadorai, A.        | : <i>The Substance of Politics</i> , Chap. I.                                |
| Asirvatham, E.       | : <i>Political Theory</i> , Chap. I.   |
| Barker, E.           | : <i>The Study of Political Science and its Relation to Cognate Studies.</i> |
| Bernard Brown        | : <i>New Directions in Comparative Politics.</i>                             |
| Carritt, E. F.       | : <i>Morals and Politics.</i>  |
| Catlin, G. E. G.     | : <i>A Study of Principles of Politics.</i>                                  |
| Catlin, G. E. G.     | : <i>The Science and Method of Politics.</i>                                 |
| Crossman, R. H. S.   | : <i>Government and the Governed.</i>  |
| Field, G. C.         | : <i>Political Theory.</i>   |
| Freeman, E. A.       | : <i>Comparative Politics.</i>   |
| Garner, J. W.        | : <i>Introduction to Political Science</i> , Chap. I.                        |
| Garner, J. W.        | : <i>Political Science and Government</i> , Chap. I.                         |
| Gilechrist, R. N.    | : <i>Principles of Political Science</i> , Chap. I.                          |
| Greaves, H. R. G.    | : <i>The Foundations of Political Theory.</i>                                |
| Gunnar Heckscher     | : <i>The Study of Comparative Government and Politics.</i>                   |
| Laski, H. J.         | : <i>An Introduction to Politics</i> , Chap. I.                              |
| Laski, H. J.         | : <i>The Danger of Being a Gentleman and other Essays</i> , Chap. II.        |
| Lasswall, H. D.      | : <i>The Future of Political Science.</i>                                    |
| Lipson, L.           | : <i>The Great Issues of Politics</i> , Chap. I.                             |
| Lord, A. R.          | : <i>The Principles of Politics</i> , Chap. I.                               |
| Miller, J. D. B.     | : <i>The Nature of Politics.</i>   |
| Oakshott, Michael    | : <i>Social and Political Doctrine of Contemporary Europe.</i>               |
| Pickles, Dorothy, M. | : <i>Introduction to Politics</i> , Chap. I.                                 |

45. Wilson, F. G., *The Elements of Modern Politics*, p. 33.

- Pollock, Sir, F. : *Introduction to the History of the Science of Politics*, Chap. I.
- Rodée, C. C. : *Introduction to Political Science*.
- Seeley, J. R. : *Introduction to Political Science*, Lecture I.
- Sidgwick, H. : *Elements of Politics*, Chap. I.
- Unesco : *Contemporary Political Science*.
- Waldo, Dwight : *Political Science in the United States of America* (UNESCO).
- Wallas, G. : *Human Nature in Politics*, Part I.
- Wilson, F. G. : *Elements of Modern Politics*.



## The State

**Meaning of the State.** The term "State", which is the central subject of our study, has a scientific meaning. We do not use it with the same vagueness and ambiguity as it is used by a man in the street. It is often, but erroneously, employed as a synonym for "nation", "society", "government", etc. But all these terms have definite meanings of their own in Political Science and should be clearly distinguished one from the other. The term State is also very commonly used to express the collective action of the community, through the agency of the government, as distinguished from individual action. For instance, whether we talk about "State management", "State regulation", "State aid", etc., we actually use the word State for government. Similarly, when we talk about the units of the Indian Republic—the State of Punjab or Uttar Pradesh or Maharashtra or Jammu and Kashmir—or the fifty states which make the United States of America, we do not give the word its scientific meaning. None of them is really a State. In Political Science the term State has a more specific and definite meaning which has little in common with most of its various ordinary meanings.

As used in Political Science, the term **State** means an assemblage of people occupying a definite territory under an organised government and subject to no outside control. One hundred and twenty-five manifestations of it are members of the United Nations. There are many more which are not members of this organization. All of them share common characteristics. They are groups of people living on, and exercising control over, a definite territory. They are divided into government and subjects; the rulers and the ruled. Some sort of system of order is represented by each. Rules of law are established and in some measure maintained, and compulsion is exercised, and the right to it is recognized both by the members of the group and by the outside world.

There can be no community without the people to form one, and no common life without some definite piece of territory to live. When people live a collective life, they fulfil the meaning of Aristotle's famous phrase, "Man is a social animal", and when they live a settled life on a definite territory to realize the purpose of collective living, they fulfil the meaning of Aristotle's second famous phrase, "Man is a political animal". But man is not so good as we want to believe that he is good. There are all kinds of men and even good men exhibit selfish behaviour because they live in society. Pride, ambition, avarice, revenge, lust, hypocrisy and

other traits of disorderly appetites race with the goodness of man and people are usually concerned with their own welfare first and foremost. This is the evidence of history. "Society", Burke says, "requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection." The best that can be done is to control the worst manifestations of human perversity by means of political authority. The people are bound by rules of common behaviour and their violation is accompanied by punishment. That is the State. Society meets man's need for companionship, the State solves the problems created by such companionship. The State is, thus, some form of association with some special characteristics, particularly that of its territorial connection and of its use of force. It is charged with the duty to maintain those conditions of life for which the State came into existence.

The State is, therefore, a natural, a necessary, and a universal institution. It is natural, because it is rooted in the reality of human nature. It is necessary, because, as Aristotle said, "The State comes into existence originating in the bare needs of the life and continuing in existence for the sake of good life." Man needs the State to satisfy his diverse needs, and to be what he desires to be. Without the State he cannot rise to the full stature of his personality. In fact, in the absence of such a controlling and regulating authority, society cannot be held together and there will be disorder and chaos. What food means to human body so is the State to man. Both are indispensable for his existence and development. The State is, accordingly, a universal institution. It has existed whenever and wherever man has lived in an organised society, although the term State is the product of the sixteenth century and Machiavelli was the first to give it a scientific meaning. The structure of the State had been subject to a great evolution. The general process of evolution was from the similar and simple mechanism of the past to a highly dissimilar and complex mechanism of today.

**Definition of the State.** Though the State is a necessary and a universal institution, but no two writers agree on its definition. There have been many different views about the nature of the State and hence its incompatible definitions. It may well seem curious, says R. M. MacIver, that so great and obvious a fact as the State should be the object of quite conflicting definitions. "Some writers define the State as essentially a class structure... others regard it as the one organisation that transcends class and stands for the whole community. Some interpret it as a power-system, others as a welfare system. Some view it entirely as a legal construction, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community organised for action under legal rules. Some identify it with the nation, others regard nationality as incidental or unnecessary or even as a falsifying element which prevents the nature and functions of the State. Some regard it as a mutual insurance society, others as the very texture of all our life. To some it is a necessary evil, and to a very few an evil that is or will be some day unnecessary, while



to others it is 'the world the spirit has made for itself'. Some class the State as one in the order of 'corporations' and others think of it as indistinguishable from society itself." This disagreement is primarily due to the fact that every writer has defined it from his own point of view. If the author is a sociologist, like Oppenheimer or a philosopher like Hegel, or an economist, or a lawyer, his peculiar prepossessions may lead him either to distort the reality by emphasising some actual characteristics of the State ignoring the rest, or to free himself altogether from reality and to picture the State as he thinks it ought to be.

Out of this maze of confusion we select a few definitions which fairly represent the weight of authority and by comparing them try to know what is common in them. Holland defines the State as "a numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority, or of an ascertainable class or persons, is by the strength of such a majority, or class, made to prevail against any of their number who oppose it." Hall says, "The marks of an independent State are that the community constituting it is permanently established for a political end, that it possesses a defined territory and that it is independent of external control." and a State exists, according to Oppenheim, "when a people is settled in a country under its own sovereign government." Bluntschli says, "The State is the politically organised people of a definite territory," and, according to Woodrow Wilson, it "is the people organised for law within a definite territory." MacIver defines it as "an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order." Professor Laski defines the State as "a territorial society divided into government and subjects claiming, within its allotted physical area, a supremacy over all other institutions."

Notwithstanding the disagreement amongst these writers all agree in ascribing to the State the three elements: people, territory and government. Disagreement again becomes prominent in respect of the fourth element of sovereignty. Those who deny to the State the element of sovereignty accord a special quality to government. It is habitually obeyed, says Sidgwick; it is superior to individual wishes, says Esmie; it claims unlimited authority, says Zimmer; it is endowed with coercive power, says MacIver; it is sovereign, says Oppenheim. When government is accorded superior quality, it is really the quality of the State. The essence of the State, according to Finer,<sup>2</sup> is in its monopoly of coercive power. "This, then, is the State; and its supreme power and monopoly of coercion (which it can devolve in many ways on its own terms) is sovereignty." The sovereign is "legally supreme over any individual or group", says Laski,<sup>3</sup> and the sovereign possesses "supreme coercive power." The State and government are by no means the same thing. Government is merely an essential instrument or contrivance of the State through which its authority is manifested and purpose realized. (Taking cognisance of all such considerations, Dr. Garner gives a matter of fact definition of the State. He defines the State as "a community of persons,

2. Laski, H. J., *The Theory and Practice of Modern Government*, p. 10.

3. Finer, H., *The State in Theory and Practice*, p. 9.

more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience.”

## ELEMENTS OF THE STATE

The State must, therefore, possess the elements of

1. Population;
2. Territory;
3. Government;
4. Sovereignty.

1. **Population.** All we said above leads us to two conclusions: (1) that the State is a human institution; the product of man's gregarious nature and the result of bare necessities of human life, and (2) population and land are the starting point of any study of man in his organised groups. It is the people who make the State, without them there can be none. But population must be sufficient enough to make a State and sustain it. The members of one single family do not make a State; there should be a series of families. No limit, however, can be placed on the number of the people constituting the State. Differences in population, other things remaining the same, do not make any difference in the nature of the State, although opinions as to its size have varied from time to time.

Plato and Aristotle put definite limitations on the population of the State. Their ideal was the Greek City-State, like Athens and Sparta. Plato fixed the number at 5,040 citizens. Aristotle held that neither ten nor a hundred thousand could make a good State, both these numbers were extremes. He laid down the general principle that the number should be neither too large nor too small. It should be large enough to be self-sufficing and small enough to be well governed. Rousseau, the high priest of direct democracy, determined 10,000 to be an ideal number for a State.

Modern tendency is in favour of States with huge populations. It is believed that manpower of the State must swell as population is the sinews of war and power. (Hitler's and Mussolini's governments gave bounties to couples producing children above a given minimum. Issueless and unmarried persons were taxed) Russia, too, has encouraged growth of her population. (The Soviet constitution guarantees State aid to mothers of large families and unmarried mothers. The honorary title of Heroine Mother is conferred on mothers who have borne or raised ten or more children.<sup>4</sup> In India, the problem is to check the ever growing population, because of the wide disequilibrium between the population and the available means of production.)

4. Garner, J. W., *Political Science and Government*, p. 52.

5. Article 122.



But the size of population is no criterion of the State. Monaco and Russia are the same as States, although there is a great disparity in their populations. Similarly, increase or loss in population makes no difference in its statehood. Though, no limit, either theoretical or practical, can be placed on the population of a State, yet the population must be sufficient to maintain a State organisation and it should not be more than what the territorial resources of the State are capable of supporting. But behind all these quantitative factors lie qualitative elements in evaluating the problem of population of a State. Population cannot be reckoned in mathematical terms; the kind of people they are matters no less than their numbers. Aristotle rightly said that a good citizen makes a good State and a bad citizen a bad State. A good citizen must be intelligent, disciplined, and healthy. Healthy citizens are the health of the State, for disease diminishes intelligence, capacity for work, energy and vitality; it makes for poor production, laziness and lethargy. Similarly, good citizens will not allow religious or political differences to destroy the State's unity and security. The people of India have yet to learn the requisites of good citizenship, though in numbers they stand in the front row.

2. **Territory.** Some writers ignore territory as an element of the State. Leon Duguit says, "The word State designates the rulers...or else the society itself in which the differentiation between rulers and ruled exists and in which, for that very reason, a public power exists."<sup>6</sup> Duguit is chiefly interested in the differentiation between rulers and ruled which takes place "in almost all human societies, large or small, primitive or civilised," and, then, he tersely says that "territory is not an indispensable element in the formation of a State". Sir John Seeley, too, does not regard territory as an essential attribute of the State.<sup>7</sup> If a society is held together, he maintains, by the principle of government, it constitutes a State. Political Science, he further says, should not concern itself only with the so-called civilised State. Why should we not say that States are found in the deserts of Arabia and in other regions where the soil is unfruitful and discourages fixed settlement and agriculture? W. W. Willoughby says, "The State itself then is neither the People, the Government, the Magistracy, nor the Constitution. Nor is it indeed the territory over which its authority extends. It is the given community of given individuals, viewed in a certain aspect, namely, as a political unity."

But such views are rarely encountered now. They have been rejected, not on theoretical grounds, but because of certain practical considerations. Even Duguit admits that in practice there can be no State without fixed territory. Just as every person belongs to a State, so does every square yard of earth. There is no State without its proper territory, large or small, and no territory that is not part of some State, large and small. And as far as we personally are concerned, it is our connection with a particular territory that normally creates our membership of a State. I am a citizen of India, because I am born there,

6. As quoted in E.M. Sait's *Political Institutions—A Preface*, p. 92.

7. Seeley. J., *Introduction to Political Science*, pp. 31-37.

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or because my father was born there. My fellow citizens are my fellow-residents, and it is this sharing of the same territory that creates most of our common interests. Living together on a common land welds the people in a community of interests and it is a powerful incentive to fellow-feeling. Love for the territory inculcates the spirit of patriotism, which has been described in all ages and stages as a supreme virtue of man. Some call their country 'Fatherland,' others call it 'Motherland,' and they invoke his or her blessings.

Moreover, the conduct of international relations would be seriously impeded without the requirement of a defined territory. All authorities on International Law are now agreed that a fixed territory must be a condition of Statehood. People and government are not enough. The occupation of a fixed territory is also essential, otherwise the State could not be readily identified and held to account if one attempts to conquer the other.]

There are at present one hundred and twenty-five States, which are the members of the United Nations. All told there are today some 150 odd States in the world. Alongside of such giants as the United States and USSR we rank such pigmies as San Marino and Monaco, and Luxemburg<sup>8</sup> as independent States. Vatican city, in Rome, has something like 1,000 people. No limit, like population, can be put on the territory of the State, although opinion has differed on the political utility of a small and a big State. Plato drew a close analogy between the stature of a well-formed man and the size of a normal State. Aristotle was also favourably inclined towards the State of moderate size. Rousseau took his cue from Plato's analogy and set definite limits to the size of a well-governed State. He maintained that in general "a small State is proportionately stronger than a large one." Montesquieu said that there is a necessary relation between the size of the State and the form of government best adapted to it.

Popular government, it has been maintained, can be applied only to a small State. In a small State the population is limited and the people have the best opportunity to combine together and express their opinion. They can exercise vigilance, which is the price of democracy, far more effectively when the State is small. De Tocqueville said, "The history of the world offers no instance of a great nation retaining the form of a republican government for a long series of years. It may be advanced with confidence that the existence of a great republic will always be exposed to far greater dangers than that of a small one . . . All the passions which are most fatal to republican institutions spread with an increasing territory, while the virtues which maintain their dignity do not augment in the same proportion."<sup>9</sup> Direct democracy can only flourish in a small State and Switzerland is cited as a living example. A small State, it is further argued, evinces more unity and greater patriotism. It is a compact class of people who live a corporate life. Each stands for all and all stand for each concentrating their energies collectively in promoting common welfare.

8. Luxemburg has a population of 33,000.

9. De Tocqueville, A., *Democracy in America* (translated by Reeves), Vol.



Small States, on the other hand, are relatively less secure. They fall an easy prey to bigger States which are usually aggressive and history is full of examples of many a naked aggression. Hitler in no time trampled Poland and other Central European countries. Japan did the same in the Far East. Recent opinion, therefore, is invariably in favour of bigger States. Trietschke, the German philosopher, in his work on "Politics" (*Politik*), published a little before World War I, declared that "the State is power," and it is a sin for the State to be small. He said that even the idea of a small State "is ridiculous on account of its weakness, which in itself is reprehensible because it masquerades as strength."<sup>10</sup>

Economic resources cannot be left out of account while evaluating the utility of small States. ~~The~~ The modern tendency is towards planning and self-sufficiency and it can only be realised when the territory of the State is large enough to abound in a variety of natural resources. The scale of production determines the mode of production. Large-scale production is always accompanied by rationalization of industry and it means the advantage of a huge and stable domestic market. After all, the economic conditions of a State determine the political stature of its people. In this competing world a large number of small States endanger international peace.

The improved political devices run down the argument that small States are best suited for democracy. The representative system, growing familiar to Europe from the twelfth and thirteenth centuries and now taking roots in Asia and Africa, has vastly extended the scope of democratic institutions. Federalism has also proved its value. Federalism has reconciled local autonomy with national unity, diversity with uniformity, and it has enabled local communities to retain much of their individual character and yet they co-operate for certain purposes in a single State.

Big States, according to Trietschke, "are more adapted than small ones to promote the development of intellectual culture." The resources which a big State possesses, the talent it can command, and the greater genius it can produce immensely help the cultural advancement of a nation and consequently its civilisation. Lord Acton, a great admirer of big States, while summing up the defects of small States says, that they "isolate and shut off their inhabitants, to narrow the horizon of their views; and to dwarf in some degree the proportion of their ideas. Public opinion cannot maintain its liberty and purity in small dimensions, and the currents that come from large communities sweep over a contracted territory... These States, like the minuter communities of the Middle Ages, serve a purpose, by constituting partitions and securities of self-government in the larger States; but they are impediments to the progress of society, which depends on the mixture of races under the same government."<sup>11</sup>

The principles of representation and federalism, operating in the transformed mechanical environment, have invalidated some of the political premises of the past and public opinion today veers round big States.

10. Garner, J. W., *Political Science and Government*, p. 97.

11. *History of Freedom and Other Essays*, p. 295.

Yet, large and small States continue to be discussed. But as long as power remains a primary factor in international politics, States must either be large or make no attempt to play an important political role. It must, however, be emphasised that there should be some proportion between the population and territory of the State. If there is a disproportionate disparity between the two, the State must suffer from all those economic and political disabilities which are natural to such a situation. The State, in brief, must be viable or capable of maintaining a separate independent existence. This can be possible only if it has adequate area and resources to support the increasing population and to adequately meet the needs of defence and efficient administration. The modern demands of efficient and up-to-date defence and administration are ever-growing and consume a pretty big slice of the resources of the State.

3. **Government.** The purpose for which people live together cannot be realized unless they are properly organised and accept certain rules of conduct. The agency created to enforce such rules of conduct and to ensure their obedience is called government. Government, in fact, is the focus of the common purpose of the people occupying a definite territory and it is through this medium that common policies are determined, common affairs are regulated and common interests promoted. Without government the people will be just a babel of tongues with no means of collective action. They would divide themselves in groups, parties and even rival and antagonistic associations with rivalry, conflict and war ever raging amongst them. It is, therefore, essential that there should be a common authority and a consequent order wherever people live. It is the prerequisite of human life and, as such, government is an essential element of the State. The State cannot and does not exist without a government, no matter what form a government may assume.

4. **Sovereignty.** Sovereignty of the State is its most essential and distinguishable feature. A people inhabiting a definite portion of territory and having a government do not constitute a State. They must be internally supreme and free from external control. Sovereignty of the State has two aspects, internal sovereignty and external sovereignty. Internal sovereignty is the State's monopoly of authority inside its boundaries. This authority cannot be shared with any other State and none of its members within its territory owes obedience to any other State. If the State admits no rival within its own territory, it logically follows that it has no authority outside its own territory. Each State is, therefore, independent of other States. Its will is its own, unaffected by the will of any external authority. This explains the meaning of external sovereignty. We shall return to the discussion on Sovereignty in a later Chapter.<sup>12</sup>

**Conclusion.** Every State, therefore, must have its population, a definite territory, a duly established government and sovereignty. Absence of any of these elements denies to it the status of Statehood. Accordingly, the term "State" generally used for the units of the Indian Republic, or for any one of the fifty States, which make the United States of America, is a misnomer. None of them is sovereign. They possess the first three elements and are autonomous in their own spheres of jurisdiction. But



autonomy is not sovereignty and lack of sovereignty gives them no position to rank as States.

## STATE AND GOVERNMENT

**Distinction Between State and Government.** In everyday language the two terms the State and Government are often used interchangeably as if there is no difference between them. The Stuarts in England did not differentiate between the two with a view to justifying their absolute authority. Louis XIV of France used to say, "I am the State." Some Political philosophers, too, like Hobbes, employed the terms State and government as if they were identical in meaning. But the State and Government are by no means the same thing. They are not synonymous, for it is perfectly possible to conceive of Communities—primitive, nomadic tribes, for example—which are not "States" in the sense in which India, Pakistan, Britain, and the United States of America are States, but which have government in the accepted rules of conduct, by which law and order are maintained. Indeed, it could be argued, says MacIver, that "where the family exists—and it exists everywhere in human society—government already exists." If this is so, government can exist independently of States. But no State can exist without the government and, it is one of the elements of the State. It is created to realise the purpose for which the State comes into existence. But like all created agencies, it has no inherent powers. It can do only those things which it is specifically authorised to do, and those it must do in accordance with the provisions and limitations set forth in its charter or constitution. Government is only the working machinery of the State and its status may be compared to that of the board of directors in a joint stock company. Just as a board of directors is the nominee of the shareholders and it acts on behalf of the corporation, so is the Government in the State. Government may, thus, be defined as "the agency or machinery through which common policies are determined and by which common affairs are regulated and common interests promoted. Without a government the population would be an incoherent, unorganised, anarchic mass with no means of collective action."<sup>13</sup>

Government is a small fraction of the total population of the State entrusted with the task of realizing the purpose for which the State exists. The latter is an abstraction and intangible whereas government is emphatically concrete. Laski is, accordingly, correct, in a way, when he says that for the purposes of practical administration, the State is nothing but the government. Cole also holds the same opinion. To him, the State is "nothing more or less than the political machinery of government in the community." It is, no doubt, true that government is the working machinery and it acts for the State being concrete, yet it will be a political sin to identify the two. The government is an instrument of the State and, as such, its powers are derived and not original and supreme. Original powers belong to the State, a sovereign body. Being an agent of the sovereign body, the government "has only a lease of authority, revocable by the sovereign." The State, in brief, is the principal, the master, to which authority the government must ultimately bow. The master can take

13. Garner, J. W., *Political Science and Government*, p. 101.

back the powers it has given, diminish them or even expand these at its will. "When we speak of the State," says MacIver, "we mean the organization of which government is the administrative organ... A State has a constitution, a code of laws, a way of setting up its government, a body of citizens. When we think of this whole structure we think of the State."

The State possesses the character of permanence and continuity. Governments change or die. The King in Britain is a part of the machinery of government in that country, and the maxim of the British Constitution is: The "King is dead, Long live the King." It means that Henry, Edward or George may die, but the King survives them all. George VI died in 1952 and simultaneously with the announcement of his demise a proclamation was made: "Long Live Queen Elizabeth." Thus, one part of the machinery of government gave place to a new, but without affecting the existence of the State. Governments in every country are constantly undergoing changes, either as a result of revolution or through legal processes, yet the State continues unimpaired and unaffected. The abdication of King Farouk did not mean any change in the State of Egypt; only the government changed. Similarly, the abrogation of the Constitution of Pakistan by General Mirza and establishing there a military dictatorship did not affect the State of Pakistan. General Mirza's own exit and General Ayub's assumption of Presidential office brought no change so far as Pakistan as a State was concerned. It meant only a change in government. With the death of Nehru on May 27, 1964, a new government under Gulzari Lal Nanda came in. Since it was an interim government, it was replaced by the government headed by Lal Bahadur Shastri. Shastri died on January 11, 1966, and, again, Gulzari Lal Nanda succeeded him as an interim arrangement. Mrs. Indira Gandhi finally succeeded Nanda. The Russian State continued to exist through the revolution of 1917. It was only the Soviet Government which replaced Tsar's Government. It does not, however, mean that the State is immortal. Sovereignty is the essence of the State and so long as it retains sovereign character, it remains the State. With the disappearance of sovereignty, it loses its character of Statehood. A State, also, loses its identity when there is a total extinction of its population: there can be no State without people.

Here is a summing up of the differences between the State and government as pointed out above:

- (1) government is the representative of the will and power of the State. It is an agent which acts on behalf of its principal, the State;
- (2) the State is an abstraction whereas government is tangible and concrete consisting of a definite number of persons, who express, formulate and execute the will of the State. The State embraces all the people occupying a definite territory and it is subject to no outside control; a concept without concrete form or shape. We analyse it to the extent that we know the elements of which it is composed. The elements of the State are: population, territory, government and sovereignty;
- (3) the State is more or less permanent whereas governments change;



- (4) governments are of different types and they may vary from State to State. New forms of government may develop replacing old. But the State is a universal institution having one single form with its four elements. It has so existed and shall ever so exist till the concept of a sovereign State is abandoned from the world of practical politics;
- (5) being an agent of the State, the authority of government is derived and limited by the terms of the Constitution. The State being the principal, the master, its authority is original and unlimited. It is sovereign which government is not.

### STATE AND SOCIETY

**Distinction Between the State and Society.** We must also clearly distinguish between the State and Society because "to identify the social with the political is to be guilty of the grossest of all confusions, which completely bars any understanding of either society or State." To equate the State with society is to justify State interference in all aspects of human life thereby significantly affecting individual liberty. Aristotle's State was an omniscient State as he made no difference between the State and society. A dictator, too, will pay scant attention to this distinction. There is no sphere of life which a dictator's State will not cover. For Hitler and Mussolini there was nothing above the State, nothing beyond it, nothing besides it.

Society is the product of man's instinctive desire for association which finds expression in the aggregation of people having common interests and united together by what may be called "consciousness of the kind." The people who live together think alike, associate with one another, and make common efforts for a common purpose or plan. They establish, what Sociologists call, "functional" institutions for the realisation of that common purpose which associates men together. It may be a club, a debating society, a religious, economic or political association. But all combined together make the social structure and aim to serve the various purposes for which the society comes into existence. "Social relations are threads of life" and social institutions "form the loom on which the threads are woven into a cloth or garment." Society stands for the whole scheme of life and it is interwoven by different associations which perform different purposes to complete the whole purpose of life. Political purpose is one of those purposes and it is performed by the State. The State is, therefore, one of these "functional" institutions, the creation of man's will and reason. It is organised in a special way to secure certain results. It emerges and exists within society, but "is not", as MacIver says, "even the form of society." The geographical areas of the State and society may be the same and their membership may also be identical, but they are distinct in origins, aims and functions. The State exists for one single purpose and its functions are relative to that purpose. Society exists for a number of purposes, "some great and some small, but all in their aggregate deep as well as broad."<sup>14</sup> The organisation of the State "is not all social organisation," as MacIver puts it, "the ends for which the State

14. Barker, E., *Principles of Social and Political Theory*, p. 42.

stands are not all the ends which humanity seeks, and quite obviously the ways in which the State pursues its object are only some of the ways in which within society, men strive for the objects of their desire."

Since society is natural and instinctive and the State is the creation of will and reason, society is prior to the State and it embraces all communities organised and unorganised. Organisation is not the essential characteristic of society. But the State must necessarily be organised. The Pathans of the Tribal Area, now on the North-West Frontier of Pakistan, do not form a State, though every tribe is a distinct social unit. Similarly, certain groups of Eskimos have no recognisable political organisation.

The State is definitely a territorial organisation. Society recognises no territorial limitations. Its branches may be spread in other parts of the universe too. Then, society embraces the whole life of man and all those social ties, like the family, the caste, the church, the club, etc., which bind men together. The State is concerned only with those social relationships that express themselves through government. It has no jurisdiction over others. MacIver has beautifully expressed this difference. He says, "that there are social forms, like the family or the church or the club, which owe neither their origin nor their inspiration to the State; and social forces, like custom or competition, which the State may protect or modify, but certainly does not create; and social motives, like friendship or jealousy, which establish relationships too intimate and personal to be controlled by the great engine of the State."<sup>15</sup>

The State is sovereign and it lays down a system of imperatives. If one disobeys the imperatives of the State, which take the form of laws, he can be punished. But society does not possess coercive power. It is the monopoly of the State. Society, no doubt, has its own rules which regulate social behaviour, but they are not imperatives. They are simply rules of conduct, which the members of society are desired to observe. It has no authority to force their obedience. Nor can it physically punish those who disobey its rules. Society ensures observance of its rules by persuasion, and appeal to the goodwill of its members. Barker rightly says, "the area of society is voluntary co-operation, its energy is goodwill and its method is elasticity, while the area of the State is mechanical action, its energy is force and its method is rigidity."

While the State is not identical with society, yet it provides the framework of the social order. According to Laski, the State is a way of regulating human conduct. "Any analysis of its character reveals it as a method of imposing principles of behaviour by which men must regulate their lives."<sup>16</sup> The conditions in which we are born, grow up, are educated, work, enjoy our leisure, own property, marry, have children and die are all laid down by the State, and the Government can compel us to comply with them. All births must be registered, otherwise all kinds of complications can arise. Similarly, parents are obliged to send their children to school for a certain number of years. They are obliged to notify the authorities if they suffer from certain infectious diseases. Citizens must pay taxes to the State, whether they approve of the uses

15. *The Modern State*, p. 5.

16. *An Introduction to Politics*, p. 15.



to which the money is put or not. They must clothe themselves decently, behave with propriety in the street, avoid making themselves a nuisance to their neighbours, and they must respect the persons and property of other people. There is, in fact, hardly a single human activity which is not in some way regulated by the State. All conduct in society must conform to the way of life prescribed by the laws of the State as the State makes and maintains its laws not for the sake of laws, but what they do to individual lives. The State, thus, represents the highest form of social organisation and it exists to regulate and cement social relations. It binds people together and enjoins upon them to observe certain uniform rules of behaviour without which we cannot think of a well-ordered social life.

It may, however, again be emphasised that "the State is a structure not co-eval and co-extensive with society, but built within it as a determinate order for the attainment of specific end."<sup>17</sup> The end of the State is to provide those conditions without which happiness of man cannot be secured. But the State can only serve its purpose when it does its own functions efficiently and refrains from trespassing into others. If it does, then, the State stands equated with society embracing the whole life of man. This will make the State omniscient and omniscience really means incompetence. It may mean even something more. The happiness of the individual may be sacrificed in the name of the glory and prosperity of the State. In this way, all social activities which constitute the social order will ultimately be at the mercy of the Government, for "the State is", as Laski says, "for the purposes of practical administration, the government." The Government may prescribe anything which it may like and as it likes. This is neither the way of the State nor that of the Government. The State is the creation and agent of society and, therefore, its subordinate. Both society and the State strive to achieve the common objective: the free development of human personality; his happiness. This is possible only when the distinction and collaboration between the two is properly recognised.

Following is the summary to clarify the points involved in the above discussion:

(1) Society is instinctive to man and is, accordingly, spontaneous in its growth and development. MacIver says, "wherever living beings enter into, or maintain, willed relations with one another, there society exists." The State is one of the associations contained within society, the creation of man's will and reason to maintain and cement the various aspects of social life. Two results, then, follow:

- (i) society is both prior and wider than the State; and
- (ii) society is a complex of all such associations as economic, educational, religious, political and cultural.

"Society precedes the State just as it precedes the family, the church, the corporation, the political party. It unites all these as a tree unites its branches. The State is one of these associations and it has become

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17. MacIver, R. M., *The Modern State*, op. citd., p. 40.

the most prominent of all because it controls and co-ordinates the various aspects of social life."

(2) The purposes of society are many and diverse whereas the purpose of the State is only one, its political organization and its end is related to its purpose to which it must confine.

(3) The State is definitely territorial, society is not. Loyalty to the State does not exhaust all the social obligations of man.

(4) The structure of society is elastic and it is based upon the voluntary co-operation of its members; it appeals and persuades. The State is compact, its actions are mechanical, its methods are rigid and its power is force.

(5) The State issues orders and their disobedience is accompanied by physical punishment. Society acts upon its members through customs, conventions and moral rules. It exercises social pressures but not force.

(6) In spite of these differences between society and the State they are connected and inter-dependent. Social conduct must conform to the way of life prescribed by the laws of the State. But the State must not trespass into the sphere not assigned to its jurisdiction.

## STATE AND ASSOCIATION

**Distinction Between the State and Association.** Society, as we said before, is not a mere aggregate of individuals, but a collection of groups composed of individuals. These groups are voluntarily formed by man for the satisfaction of his various needs, social, economic, cultural, recreational, and many others. All these groups express and develop the sociability of man. In the beginning man's social wants were few and, accordingly, the groups were limited in number. But in the complex life of our times social wants have multiplied enormously and today society is a veritable network of such associations. Barker says, "We see society less as a number of individuals leading a common life, we see it more as an association of individuals already united in various groups, each with its common life, in a further and higher group for a further and higher common purpose."

An association is defined as "a group of persons or members who are associated and organised into a unity of will or a common end."<sup>18</sup> Cole defines it: "Any group of persons pursuing a common purpose or system or aggregation of purposes by a course of co-operative action extending beyond a single act, and for this purpose, agreeing together upon certain methods of procedure and laying down, in however rudimentary a form, rules for common action."<sup>19</sup> An association, therefore, embraces a group of people having a common purpose or purposes for which they associate and organise themselves. A mere group of men do not form an association. Every association must have, in the first place, some specific purpose or purposes to fulfil. Secondly, individuals

18. MacIver, R. M., *The Modern State*, op. citd., p. 6.

19. Cole, G. D. H., *Social Theory*, p. 37.



so associated should be duly organised. Without organisation it becomes just a collection of individuals or a crowd. A crowd has no method of doing things and achieving its purpose, as there is no common bond of cohesion between them. And there must be some man or body of men to see that the rules of the association are duly obeyed to realise its purpose. Every association, therefore, necessarily has its constitution, a code of rules and a way of setting up its 'government'; churches, political parties, Trade Unions, for example.

The State, too, is a group of human beings. It comes into existence, like other groups, to satisfy human need through concerted action. While each group has its distinctive character and problems, yet all pursue their activities to secure a happy and good life. In spite of this close resemblance between the State and other associations, there are some fundamental differences which distinguish the State from any other associations.

1. The State is a territorially integrated association and its territory is most distinctly demarcated. The jurisdiction of each State lapses beyond its territorial limits. But voluntary associations are not restricted to a definite territory. Many of them are international in scope, spread all the world over, and include in their membership citizens of many States, as the Rotary Club, the Red Cross Society, and the Boy Scouts and Girl Guides. The membership of each State is distinct. I am a citizen of India while John is a citizen of, say, United States of America.

2. Membership of the State is compulsory. One must be a member of one State or the other;<sup>20</sup> there is no other opinion for him. But membership of other associations, except the family, is voluntary and optional. It is for each individual to decide whether he should be a member of one association or many associations at the same time; it is his own option. He is also free to withdraw from any association whenever he elects to do so; it is his own choice.

3. The State is a permanent and enduring association unless it is conquered and annexed. Governments may come or go, the sovereignty may shift from one centre to another, the State continues. But many associations have only a temporary existence. An association may cease to exist as soon as the purpose for which it came into existence has been realised. Some associations disappear because of internal dissensions. Even violent internal commotions and changes do not affect the existence of the State, they may simply lead to a change in the government.

4. Each association is promoted for a specific object or objects and its activities are limited to the pursuit of those interests. In other words, the sphere of activity of every voluntary association is well defined. The province of the State, on the other hand, is much wider and its activities are manifold. It is charged with the care of general rather than particular interests. MacIver says that the State "is essentially an order-creating organisation. It exists to establish order, not, of course, merely for the sake

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20. Occasionally, there may be a case of double citizenship, but it is exceptional and for a temporary period.

of order, but for the sake of all the potentialities of the life which require that basis of order."

5. The State is sovereign and, as such, it possesses the power to enforce its decisions. Voluntary associations do not possess the legal power of coercion. If members of an association disobey its rules and regulations, they cannot be physically punished. It has no means to command and enforce obedience. It can only morally condemn the wrong-doer, though it may be admitted that in some cases moral condemnation is worse than physical punishment.

6. The State possesses the power to control the activities of all voluntary associations. It can even ban the existence of an association, if it is considered to have acted or is likely to act so as to disturb public peace and security. As a matter of fact, no State would permit the formation, or continued existence within its territorial limits, of an association for criminal or immoral purposes, or one whose objects are avowedly hostile to the public policy of the State. Examples when associations have been declared unlawful or have been dissolved by the command of the State are too numerous to quote. The Government of India some time back declared the R.S.S. an unlawful association and banned its activities, though the ban was lifted afterwards. The Pakistan Government very recently prohibited the organisation of private military formations and then liquidated the political parties. Now political parties are permitted to be formed.

7. Finally, the State can create many associations and prescribe their functions. The universities in every country are established by the laws of the State and their functions are clearly defined therein. Similarly, it may create corporations or other kinds of associations for certain specific purposes.

## COMMUNITY AND INSTITUTION

Community and institution are two terms which are frequently used in Political Science and yet without a definite meaning attached to them. Their exact definition is essential for the proper understanding of social and political principles and this necessity has become all the more pressing with us because of our complex civilisation.

We defined society as a group of people living interdependently attempting to solve their problems by common action. There are large societies and small. Local societies are usually referred to as communities. Indeed, society itself may be defined as a gregarious community. "Community", says MacIver, "I mean an area of common life, village, town, or district, or country, or even wider area".<sup>21</sup> Common life and common consciousness are the two distinctive features of a community whatever be the extent of area they refer to. The men who live together on common land "develop in some kind or degree distinctive common characteristics, manners, traditions, mode of speech and so on."<sup>22</sup> On this distinctiveness from others is realized, they constitute a community.

21. MacIver, R. M., *Community*, p. 22.

22. *Ibid.*, pp. 22-23.



There are in a community suggestions of common values and homogeneous culture. It is evident that the smaller a community is, the more common and firm are its social values. Conversely, the larger the community, the less agreement there will be upon social values, whether they be ideological, religious, political, cultural, etc. India is a huge country inhabited by different religious communities as the Hindus, the Muslims, the Sikhs, the Christians and many others. Then, the people of India speak different languages and constitute linguistic communities. Communities based on the conception of language, as Madrasis, Bengalis, Punjabis, Maryanvis, embrace all people living in their respective areas and professing different religions. There may also be a commercial community and a community of intellectuals. In both these cases neither the bonds of religion nor the bonds of language intervene. They constitute a community of interests. Every country and every nation presents such crossing and recrossing currents of common life. "The conception of a community may thus be a conception of a machinery of wheels within wheels, or it may be a conception of a geometrical problem in which the lines bisect and trisect from several directions."<sup>23</sup>

A community may, thus, be a part of the wider community, and, in fact, "all community is a question of degree." The whole world makes a community and it is the largest of all. Family is a community of blood and it is the smallest of all. Nation is also a community. A nation is a real feeling of unity which defies all other apparent diversities, like religion and language. Small communities, thus, exist within the great communities and this process is the natural outcome of civilization. But the object of a small or great community is the same. It is a group of people tied by common affinities aiming at common good life. It is a circle within a circle and MacIver has succinctly pointed out that "we need the smaller as well as the larger circles of community. The great community brings us opportunity, stability, economy, the constant stimulus of a richer, more varied culture. But living in the smaller community we find the nearer, more intimate satisfactions. The larger community provides peace and protection, patriotism and sometimes war, automobiles and radio. The smaller provides friends and friendship, gossip and face-to-face rivalry, local pride and abode. Both are essential to the full life process."<sup>24</sup>

**Institutions.** Society, we have said, is a honeycomb of associations; but no association can function without an institution. An institution is the form, the structure or the framework of an association. It is a means by which the purpose of an association is realized; the instrument "through which common interests are realized, the mechanism on which is based the success or failure of an association." Or to put it in a simple way, an institution is a group of people working toward a common aim. A university is an association and its common aim is realized through the agencies of its various teaching departments, colleges affiliated to it and the administrative office working under the control of the Registrar. Similarly, government is the institution of a political association, the State.

23. Ilyas Ahmed, *The First Principles of Politics*, p. 21.

24. MacIver and Page, *Society: An Introductory Analysis*, p. 11.

It is through the mechanism of the government that the State fulfils its purpose.

An institution is not always a mere framework. It is as living as an association and a smaller institution is by itself an institution of a large association. Thus, a political party, a judicial tribunal, a legislative body, an administrative bureau all are institutions as government itself is the institution of an association, the State. The people who comprise them may come and go as time passes, but the institutions once established they endure, though they may be moulded and shaped by the people who comprise them according to the changing needs of the time. Monarchy in Britain is an institution but it is not the same today as it was during the times of the Tudors or Stuarts or even during the Victorian era. Similarly, British Parliament is sovereign and it took eight centuries to transform it to its present position and stature. The leaders of a political party will rise or fall over a period of years, but the party continues as an institution.

Moreover, the common aim that an institution pursues can be a very general one. The members of a legislative body, for example, will not always agree on which bills should be passed or in what form. Nor will the judges of a judicial tribunal always hand down unanimous decisions. But they do agree on when to meet, on how to handle their business, and on what it is they are supposed to be doing. Thus, all members of Parliament in India know that they assemble in New Delhi on scheduled dates to pass laws; all Justices of the Supreme Court know that it is their job to decide cases. The President of India knows his job and performs it in accordance with the provisions of the Constitution. An institution, then, consists of individuals, general goals, and rules for reaching those goals.

There can be a one man institution as the Presidency in India, America and France or Monarchy in England. It may consist of a score of them as the cabinet, or hundreds of them as Parliament or a Congress, or multimillion-member institution as a political party. Some institutions have limited goals whereas others have more comprehensive. In some the members of an institutions are strong in their loyalty to its aim while in others they are apathetic or even obstructive. Parliament in India and various Assemblies of her State legislatures stand clear testimony of obstruction. To sum up, "politics cannot function without institutions, and an understanding of politics requires an awareness of how they operate."<sup>25</sup>

### STATE, NATION AND NATIONALITY

**Nation.** There are few other terms in Political Science which are used with the same vagueness as State, nation and nationality. Many writers use the term nation in the sense of nationality, while others identify it with the State. The looseness with which these terms are employed has been the source of much confusion and misunderstanding. Nothing is, therefore, more necessary for a sound political philosophy, than to try to sort out these three concepts, and clearly to identify the genuine meaning of each.



The word nation is derived from the Latin word *natio* which means "born". This gives it a racial or ethnical meaning. Etymologically, therefore, a nation is a people descended from a common stock. When used in this sense, a nation means a people welded together in a society by ties of blood-relationship. Burgess and Leacock define a nation in a racial sense, though the former does not seem to consider common descent as an essential element. To him nation is a "population of an ethnic unity inhabiting a territory of a geographic unity." By ethnic unity he means a population having a common language and literature, a common tradition and history, a common custom and a common consciousness of rights and wrongs. Calvo, in his work *International Law*, emphasizes that the idea of the nation is associated with origin or birth, community of race, community of language, etc. Leacock, the contemporary political scientist, unequivocally says that "the term 'nation', though often loosely used, is properly to be thought of as having a racial or ethnographical significance."<sup>26</sup> It indicates a body of people united by common descent and a common language.

But race and nation are entirely two distinct terms. We cannot vouch for the purity of blood and some of the leading modern nations are, what Sidgwick calls, "notoriously of very mixed race."<sup>27</sup> Claims to purity of blood seem somewhat fantastic to students familiar with the modern conditions of migration and intercourse. The population of a State, like that of the United States of America, may consist of either many races or mixed blood. Nation, as such, has no racial significance. What makes a group of people a nation is not necessarily a community of race, language or religion. It is a sentiment of common consciousness or like-mindedness. It is true that language and religion are important factors in welding the people together, but it seems clear that community of religion and language and community of national sentiment are not necessarily connected. Take the Swiss people. They do not speak a common language nor do they profess a common religion, yet they constitute a nation and they are as patriotic and as conscious of their common membership of a nation as any other people. Both France and Spain have a Basque population, speaking a language of unknown origin and not spoken anywhere else in the world, but the Basques do not form a nation. So do Welsh and Breton Celts, though there is a common racial and linguistic inheritance. A common religious belief has been, of course, a powerful nation-making force and powerful also to disintegrate nations. But this stage in the history of civilisation seems to be now past, although the Muslim League in India made religion the *sine qua non* of its two-nation theory and, accordingly, the demand for Pakistan, and it came into being in 1947.

Barker makes a more realistic definition of a nation. A nation, he says, is a body of persons inhabiting a definite territory and thus united together by the primary fact of living together on a common land. They are drawn from a number of races and they come from different breeds. But their wanderings brought them into this territory and they settled down here because it appealed to them to settle down there. While living

26. *Op. citd.*, p. 15.

27. Sidgwick, *The Elements of Politics*, p. 223.

together for a sufficiently long time, they developed two forms of mental sympathy. The first is a common "capital of thoughts and feelings acquired and transmitted in the course of a common history: a common capital, or tradition, which includes as a rule a common language, a common religion (which may, however, assume a number of different forms), and a common culture variously expressed in art and architecture, in literature, in social habits and otherwise." The second is the common will to live together for the future freely and independently, thus, having common thoughts, feelings and aspirations and thereby exercising their right of political self-determination.<sup>28</sup>

When the mark of the State is stamped in the "territorial nation", as Barker calls it, it becomes a national community and the State so formed a national State. There must be a general social cohesion which should serve as a cementing material before the seal of the State can be effectively imposed on a population. If the seal of the State is stamped on a population which is not held together by cementing bonds of a common tradition and sentiment, there is likely to be "cracking and splitting" as it happened in Austria-Hungary. It does not, however, mean that a single cohesive society is always necessary for the State. There are still heterogeneous States. But a single cohesive society is the basis of harmonious and viable States.

To be brief, the ties which bind the people to make them a nation are really psychological and spiritual. They are common feelings of an ardent desire to live together and to serve and to suffer for the Fatherland or Motherland cemented by the memories of a common history, especially of common struggles against foreign foes. These feelings make people a community of **patriotic sentiments** and they transmit their common heritage to posterity to keep aglow the light of patriotism in the deep recesses of their hearts. A nation is, thus, the expression of the people's consciousness of unity and once this consciousness pricks through, it makes a nation. It is in the minds of the people who inhabit a certain territory that a nation is formed and it exists. "A nation", according to Dr. Garner, "is a culturally homogeneous social group which is at once conscious and tenacious of its unity of psychic life and expression." Zimmern defines it as "a body of people united by a corporate sentiment of peculiar intensity, intimacy and dignity, related to a definite home-country." He further says, "If a people feels itself to be a nation, it is a nation." Unity in diversity is its feature.

**Distinction Between Nation and State.** The theory of one nation and one State or the creation of States on the principle of self-determination became the practical politics after World War I. New nation-States were created and the terms nation and the State began to be used as synonyms. We very often hear and read countries being described as nations when actually the word States should have been used for them. For example, the Constitution of the Republic of Argentina bears the title of the "Argentine Nation". Similarly, the name United Nations is a misnomer, for it is an international organisation of sovereign States and not nations. We can-

28. Barker, E., *Principles of Social and Political Theory*, p. 53.

29. *Ibid.*, p. 55.

not identify nation with the State. The State is a people organised for law within a definite territory whereas a nation is a people psychologically bound together having a common will to live together for the future.

Certainly, the modern State is limited by national frontiers. We are members of the State within whose frontiers we are born and we can change our State allegiance or nationality only with the specific permission of the State to which we wish to belong. Yet the State is not synonymous with the nation; both are distinct. The Scots and the Welsh would claim to be members of a nation, but they are members, not of a Scottish or Welsh States, but of the British State. In the course of history, States have annexed notions. Alsace and Lorraine were, from 1870 to 1914, part of the German State. From 1918 to 1940, they formed part of France and from 1940 to 1945, they again formed part of Germany. Today, they are once more part of France. If you ask an Alsatian whether he is a French or German, he will reply that he is Alsatian and he may add that he is also French as he is the citizen of the State of France.

But a mere organisation of the people under one government does not make them a nation. Austria-Hungary, before World War I, was a State, but not a nation. Inhabited by heterogeneous people, there was nothing other than political bonds which could knit them together. Then, sovereignty is the most essential feature of the State whereas the people may continue to be a nation even if they do not retain their sovereign character. Germany and Japan after the cessation of hostilities in 1945, no longer remained States, although the Germans and the Japanese were still nations. Poland and Finland, before World War I, were nations though not States. The term nation signifies the consciousness of unity prompted by psychological and spiritual feelings. It is, therefore, subjective whereas Statehood is objective and political.

It must, however, be remembered that since 1920 there has been a tendency to equate nation with the State. The modern theory is that each nationality should form a separate State and each State should comprise a single nation. The principle of mono-national state has lent support to the revolt of nations held in subjection and the right of every nationality to become a nation. It stands for President Woodrow Wilson's right of self-determination of nations and nationalities which was ratified by the Atlantic Charter. The mono-national State has, undoubtedly, certain tangible advantages over a poly-national State. But it cannot be denied that the presence of too many national States will add to international complications and help to flare up mutual rivalries disturbing the peace of the world. Lord Acton held that combination of different nations is as necessary a condition of civilised life as the combination of individuals to form a society. Acton pleaded for a poly-national State.

In spite of the general acceptance of the principle of a 'Nation-State', there are quite a good number of States in which the population is composite, that is, it is inhabited by the people belonging to several nationalities and not one nationality. In USSR there are more than three scores of nationalities. India is also honeycombed by the different nationalities unfortunately essentially divided on the basis of religion. In the Union of South Africa the population is sharply divided into white people and coloured people. When the population of a State is composite it is im-



portant that all citizens, irrespective of nationality to which they belong, must stand on a footing of equality and there should be no discrimination of any kind. A good and just government make the people to forget their differences and with the lapse of time they weld themselves into a unified patriotic nation. The USSR has solved its problems by guaranteeing to the nationalities linguistic and cultural autonomy. Switzerland is another example which has "developed a democratic nationalism similar to the one known in England and the United States, a nationalism made secure and strong by its insistence on individual liberty and on respect for diversity."<sup>30</sup> But the policy of apartheid pursued by the Government of South Africa has created conditions of internal crisis and the separation of the White and African nationalities is sure to come at some stage. In India, too, the problem of nationalities is not so happy as linguism, regionalism and above all communalism still guide the political thinking of the people of nationalities. Religion and politics here are considered by some nationalities as inseparable and they complicate the issues.

**Nationality.** Till recently nation and nationality were used interchangeably. Now they are used as two distinct terms, but even those who have distinguished between them have by no means been in agreement as to the difference. It is obviously due to the fact that both nation and nationality have to share the same adjectival form "national" and they have the same root *natus* which connotes the idea of birth or race. But nation, in spite of the logical difference between the nation and the State, has now definitely become political in meaning because of the universal acceptance of the theory of 'one nation, one State.' It now means a political unity—a body of people distinct from others having their own political entity. Nationality has no reference to political unity. It refers to a group of people who are united by identity of origin, race, language, or by common traditions or history. Nationality, therefore, emphasises its root meaning of common birth, real or fictitious. It is in this context that Lord Bryce defines nationality. He says, "A nationality is a population held together by certain ties, as for example, language and literature, ideas, customs and traditions, in such a way as to feel itself a coherent unity distinct from other populations similarly held together by like ties of their own." A nation, according to Bryce, "is a nationality which has organised itself into a political body either independent or desiring to be independent." Mill's conception of nationality is materially similar to that of Bryce. Mill says, "A portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others—which make them co-operate with each other more willingly, than with other people, desire to be under the same government and desire that it should be government by themselves or a portion of themselves exclusively."<sup>31</sup>

Nationality, thus, indicates a common spiritual or psychological sentiment among people having some common affinities. It is essentially a sentiment of unity which may be the result of many forces like common race and language, common religion, common residence, common history of victories won and traditions created and common political aspirations.

30. Hans Kohn, *Nationalism and Liberty*, p. 8.

31. Mill, J. S., *Representative Government*, Ch. 16.

All these factors are the bases of nationality. When all or some of these elements are present among people there grows up a sense of kinship which binds them into oneness and uniqueness. "They recognise their likeness, and emphasise their difference from other men. Their social heritage becomes distinctively their own as a man lends his own peculiar character to his home."<sup>32</sup>

Nationality, as such, is like a religion, or, to put it in the words of Zimmern, it is a matter of feeling, thinking and living. If any group of people begin to feel their uniqueness and think themselves distinct from others, which they are keen to maintain, they constitute a nationality. If they happen to organise themselves on a particular territory, called their homeland, and succeed in winning their independence, they become a nation and the State they form is a nation-State. Hayes says, "A nationality by acquiring unity and sovereign independence becomes a nation." Take the example of the Jews who have now established the Israel State in Palestine. Hitherto the Jews were a nationality; now they are a nation. A nationality may, accordingly, be described a nation in the making. "Almost every nationality either has been a State (as the Scots), or aspires to be a State, whether it be a new State or the rehabilitation of a previously existing State (as the Poles or Czechs before the Great War)."<sup>33</sup> There may still be a nationality even if it does not wish to become a nation. The Hindus and the Muslims are two nationalities, but one nation in the Sovereign Republic of India. The Welsh and the Scotch are two distinct nationalities within the British nation. Where a nation consists of distinct, socio-ethnic groups, each of these groups may be called a nationality.

Prof. Zimmern makes the following distinction between Statehood and Nationality:<sup>34</sup>

While Nationality is subjective, Statehood is objective.

While Nationality is psychological, Statehood is political.

While Nationality is a condition of mind, Statehood is a condition in law.

While Nationality is a spiritual possession, Statehood is an enforceable obligation.

While Nationality is a way of feeling, thinking and living, Statehood is a condition inseparable from all civilised ways of living.

### THE BASES OF NATIONALISM

The forces which bind the people together into a spiritual sentiment of oneness are many and diverse—common racial origin, common language, traditions and culture, common religion, common residence, common interests, and common political aspirations. All these factors have considerably contributed, at one stage or the other, to the development of that sense of special unity, which, according to Laski, "marks off those who share in it from the rest of mankind." We discuss below the part

32. Laski, H. J., *A Grammar of Politics*, p. 220.

33. Gilchrist, *op. cit.*, p. 26.

34. *Nationality and Government*, p. 51.

played by each such factor in binding the people together in a sentiment of homogeneity or a kind of fellow-feeling. It must, however, be remembered that none of these factors is absolutely indispensable, although the presence of as many of them as possible help the growth of that patriotic sentiment which makes the people a nation.

**Unity of Race.** Race unity is one of the strongest bonds of cohesion. But racial unity is no longer a necessary element of nationhood, for no race can claim its original purity. Most of the races are mixed in character and have been formed as a result of fusion of various races. The United States of America, Canada, Switzerland, etc., are the notable examples which prove the theory of a mixture of races. Even the British cannot claim purity of blood. They are a mixture of Celts, Teutons and Danes. Common racial origin itself is not the criterion of a nation. The British and the Australians are racially the same, but are now two different nations.

By the unity of race, we may mean a belief in the common origin either real or fictitious. Every nation, as a matter of fact, has legendary tales of its non-historic origin which make the people forget the diversity of their origins. If the races are well merged, the differences of origin disappear and they become a community of interests. Whenever a body of people believe that they belong to one race, they are easy to be welded together in common ties of fellow-feeling.

**Unity of Language, Traditions and Culture.** No less is the influence of language in binding the people together and developing in them national sentiments. It is very often assumed that language and race go hand in hand, because the "colour and quality of language determine the colour and quality of thought who use it." The racist theories of the Germans are largely based upon these fallacious assumptions. It cannot, however, be denied that there is nothing more which readily gives unity to the divergent races as the unity of the tongue. Language is the medium through which people express themselves and maintain mutual intercourse. Language makes possible the exchange of thoughts and feelings and the growth of tradition, at first through folk songs and folk tales and later through a written or printed literature. "There is," says Ramsay Muir, "nothing that will give unity to divergent races as the use of a common tongue. and in very many cases unity of language and community of ideas which it brings, have proved the main binding force in a nation." Bohem maintained that the concept of a mother-tongue has made language the source from which springs all intellectual and spiritual existence. Earnest Barker finds "the closest affinities between nation and language. Language is not mere words. Each word is charged with associations that touch feelings and evoke thoughts. You cannot share their feelings and thoughts unless you can unlock their associations by having the key of language. You cannot enter the heart nor the mind of a nation unless you know its speech. Conversely, once you have learned that speech you find that with it and by it you imbibe a deep and pervasive spiritual force."

The general view is that diversity in language greatly weakens national sentiments. But if diversity of language weakens the national spirit, linguistic unity does not always bring national unity. It has not united the Irish with the British, the Austrians with the Germans.



Spanish Americans show no disposition to join the Spaniards or even to consolidate in South America. English speech has not prevented the growth of an American nation. It is not language alone that creates a French-Canadian nation in Canada. The Swiss are a nation, though they are divided linguistically and four languages and a number of local dialects are far more generally spoken than the official languages. And paradoxical as it may seem, nothing whatever is done officially or privately, to lessen the linguistic differences among the Swiss. Linguistic peace reigns in Switzerland and differences of language are regarded as a stabilising factor to the Swiss national unity. USSR is a multi-national State which brought into Union over sixty races and nationalities all differing from one another in language, customs, history, and level of culture. India, too, is a classical example of linguistic diversity. Nevertheless, language is **important, not conclusive**, as a factor in a nation-building. Hence the frequent efforts to assimilate linguistic minorities.

**Unity of Religion.** Religion has played an important part in the development and consolidation of the States. In remote past, if kinship was the chief binding force of society, religion was closely identified with it. Religion, as well as kinship, welded together the ancient nations. Even today it cannot be ignored as an element in nationalism. Why did Belgium break away, in 1830, from the imposed union with Holland? There were several reasons, but not the least was the diversity of religion. Pakistan is the child of Mr. Jinnah's two nation-theory, which found a plausible justification in the religious differences between the Hindus and the Muslims. The Constitution of Pakistan, now abrogated, established an "Islamic Republic". The Constitution of 1962 sets forth certain basic principles which are to be rigidly adhered to by the authorities, while making laws. These principles of Law-making enjoin that no law shall be made which is repugnant to Islam.

Religion has remained a powerful factor in cementing fellow-feelings of oneness. But now writers are inclined to lay little stress on religion as a contemporary factor. "Sameness of religion was once a most potent factor in national development," says J. W. Burgess, "but the modern principle of freedom of religion has greatly modified its influence." If Burgess should have combined with the modern principle of religious freedom the modern decline in religious faith, his explanation would have been more apt. Religion is now separated from politics and the cases are at least as numerous in which deep-rooted religious differences have formed no obstacle to national unification. Apart from religion there are other factors which are, indeed, a strong incentive to national feeling. In the United States people are divided between many religions, nevertheless, it is an excellent example of a strong nation. So are the Swiss and the Canadians. Freedom of religious belief and spirit of toleration inculcate a spirit of national unity among societies containing diverse religious groups. We may, then, conclude with Dr. Garner that "while community of religion has in some cases been a powerful factor in the development of nationality and in the strengthening of the bonds of national unity, and while in other cases the absence of it has contributed to the disruption of the State, it is no longer, thanks to the modern spirit of toleration, an essential or important element of determining nationality."

**Geographic unity.** Geographic unity is another important factor which fosters national sentiments. It is desirable that people constituting a nation should occupy a fixed territory, the parts of which are contiguous. Undoubtedly, says Ramsay Muir, "the most clearly marked nations have commonly enjoyed a geographical unity, and have often owed their nationhood in part to this fact...." People living in contiguous areas form their own distinct habits, customs, traditions, culture, common experiences and interests. It develops national character of the people and affects their institutions.

**Common historical tradition.** Common historical traditions are regarded by Ramsay Muir as an "indispensable factor" in cementing bonds of nationhood. Mill gives it the first place of precedence and Hayes places it second only to language. Such a tradition, Muir says, embraces "a memory of suffering endured and victories won in common, expressed in song and legend, in the dear names of great personalities that seem to embody in themselves the character and ideals of the nation, in the names also of sacred places wherein the national memory is enshrined.... Here is the source of that paradox of nationality, that it is only intensified by sufferings, and, like the giant Antaeus in the Greek fable, rises with redoubled strength every time it is beaten down into the bosom of its mother earth. Heroic achievements, agonies heroically endured, these are the sublime food by which the spirit of nationhood is nourished; from these are born the sacred and imperishable traditions that make the soul of nations." The possession of national history, says Mill, and consequent "community of recollections, collective pride and humiliation, pleasure and regret, connected with the same incidents in the past," are the most powerful factors to generate national feelings.

**Common Government.** A people howsoever heterogeneous in their outlook and sentiment develop national feelings of oneness if they live for long under the same government. The process of unity is accelerated if the government is alien. People become unified in order to get rid of the foreign domination. Foreign government directs all its administrative machinery to the exclusive advantage of its own nationals and consequently creates two hostile classes, the rulers and the ruled. Misgovernment is, thus, a prolific source of nationalism.

There is yet another aspect of the problem. When diverse people live for a long time in one State and the State is tolerant in its policy towards all the diverse elements, with the passage of time, merge into one nation. "Their children become political half-castes, and the third and fourth generations lose their parental prejudices" and become part and parcel of one single nation. The people of the original thirteen Colonies, which comprised the United States after the Declaration at Philadelphia, were in their first generation either Englishmen, Germans, Poles or Czechs. Their common political aspirations cemented them in bonds of unity and oneness and all different nationalities were fused together in one American nation.

**Common interest.** Common interests, like economic and defensive, act as a fillip in strengthening the ties of unity. Economic and defensive problems are vital in the formation of federations. No one will, at the same time, deny that economic interest may intensify an existing national

consciousness. Economic advantages reconciled Scotland to union with England. The Zollverein bringing Germans together in a customs union, laid the foundation of the Confederation of 1867.

**Conclusion.** From the above discussion on Nation and Nationality following conclusions may be summarised:

1. A nationality might exist without political unity and a State might embrace many nationalities.
2. A nation is not necessarily a State, although the tendency now is to equate nation with a State. The modern theory is that each nation should form a separate State.
3. If a nation becomes politically organised, it becomes a national State. A national State is always based on nationality, but a nationality may exist without a national State.

### NATURE OF THE STATE

There are many speculations regarding the nature of the State and the relation between the State and the individual. Four important theories deserve special mention. The first is the **monistic** theory. The advocates of the monistic theory argue that individuals who compose the State have no independent existence "but are mere atomistic units in the whole mass, each dependent on the other and upon the whole for its continued existence."<sup>35</sup> They have no independent individuality of their own and all that they are and all that they have, they owe it to the society of which they are a part. Sharply opposed to it is the **monadistic** or purely individualistic theory which conceives society as a mere aggregation of individuals "each in large measure living in isolation and independent of his associates, capable of surviving and even flourishing without the aid of the State beyond a mere minimum of collective restraint for the protection of the weak against the aggression of the strong."<sup>36</sup> Every individual is, thus, a self-contained unit and there is no interdependence of one on the other. He can survive and even flourish without the aid of the State. The necessity of the State is found in giving protection to the weak against the aggression of the strong. The State is, accordingly, a police State and it exists "to protect and restrain, not to foster and promote."

Then, there is the **dualistic** theory; a compromise between the monistic theory and the monadistic theory. According to this theory every individual leads a life of his own, but each is, in a way, dependent upon others for his welfare. His existence, is neither merged in that of the whole, nor is he entirely isolated from and independent of his social surroundings. Lastly, we have the **organic** theory which considers the State as a unity similar to that which characterises a biological organism.

### THE ORGANIC NATURE OF THE STATE

**Organic theory explained.** The union of individuals forming the State has been described as similar to the Union between the several parts of an

35. Garner, *op. cit.*, p. 211.

36. *Ibid.*, p. 212.



animal body, wherein all parts are functionally related and none can exist isolated from the rest. Just as the body has a natural unity, so has a social group. An arm lives and moves only as a part of an organic whole. Amputated from the body, it dies. The Organic Theory is, thus, a biological conception which describes the State in terms of "natural science views the individuals which compose it as analogous to the cells of a plant or animal, and postulates a relation of interdependence between them and society such as exists between the organs and parts of a biological organism and the whole structure." In other words, as the animal body is composed of cells, so is the State composed of several individuals, and as is the "relation of the hand to the body, or the leaf to the tree, so is the relation of man to society. He exists in it and it in him."<sup>37</sup> The State is, therefore, an organic unity—"a living spiritual being."

**History of the Theory.** The Organic Theory is as old as political thought itself. Plato compared the State to a man of great stature, and conceived a resemblance in their functions. He said that "the best ordered commonwealth was one whose structural organisation resembled most nearly in principle to that of the individual." Cicero, too, relied upon the same analogy and likened the head of State to the spirit which rules the human body. Among writers of the Middle Ages and early modern times, the theory was supported notably by John of Salisbury, Marsiglio, Althusius and many others. It, also, found favour with Hobbes and Rousseau, although the analogies and comparisons which they made were superficial.

With the decline of the Social Contract Theory, in the early part of the nineteenth century, the theory of the organic nature of the State found a new and vigorous expression. The ancient and medieval writers had merely drawn an analogy between the State and an organism. They held that the State resembled an organism. But the writers of the nineteenth century regarded the State as an organism. Even fanciful and very often vain elaborations of the organic conception, attributing, for instance, to the State an elementary system, a nervous system, a circulatory system, etc., became the theme of the time. Indeed, the "fascination of the theory with its biological analogies and parallelisms became so widespread that political science, for a time, seemed in danger of being swallowed up by natural science."<sup>38</sup>

The new theory, that the State is an organism, took root in German soil and there it found its most notable advocates. But the culmination of the theory was reached in the writings of Bluntschli. The State, he asserted, is the very "image of human organism." As "an oil painting," he said, "is something more than a mere aggregation of drops of oil, as a statue is something more than a combination of marble particles, as a man is something more than a mere quantity of cells and blood corpuscles, the nation is something more than a mere aggregation of citizens, and the State something more than a mere collection of external regulations." He pushed his biological analogy to the extreme and endowed the State with the quality of sex, describing it as having a male personality.

37. Leacock, S., *Elements of Political Science*, op. citd., p. 75.

38. Garner, J. W., *Political Science and Government*, p. 212.

**Organic Theory as expanded by Spencer.** The theory that the State is an organism received a most scientific treatment at the hands of Herbert Spencer, the English philosopher. Spencer asserted that society is an organism and it differs in no essential principle from other biological organisms. The attributes of an organism and the society, he maintained, are similar and the permanent relations existing between their various parts are also the same. Both exhibit the same process of development. The animal and social bodies, Spencer affirmed, begin as germs, all similar and simple in structure. As they grow and develop, they become unlike and complex in structure. Their process of development is the same; both moving from similarity and simplicity to dissimilarity and complexity. As the lowest type of animal is all stomach, respiratory surface, or limb, so primitive society is all warrior, all hunter, all builder, or all tool-maker. As society grows in complexity, division of labour follows, i.e., new organs with different functions appear, corresponding to the differentiation of functions in the animal, in which fundamental trait they become entirely alike."

In each case there is mutual dependence of parts. Just as the hand depends on the arm and the arm on the body and head, so do the parts of the social organism depend on each other. Every organism depends for its life and full performance of its functions on the proper co-ordination and interrelation of the units. As the diseased condition of one organ affects the health and proper functioning of other organs, similarly, individuals who form the society are inseparably connected with one another for the realisation of their best self. There is so much dependence of one on the other that the distress of one paralyses the rest of the society. "If the iron worker in the social organism stops work, or the miner or the food producer, or the distributor fails to discharge his natural functions in the economy of the society, the whole suffers injury just as the animal organism suffers from the failure of its members to perform their functions." The society and organism, it is further pointed out, are both subject to wear and tear and then replacement. Just as cell tissues and blood corpuscles in the animal organism wear out and are replaced by new ones, in the same manner, old, infirm, and diseased persons die giving place to newly born persons.

Spencer, then, gives some structural analogies between society and organism. He says, society, too, has three systems corresponding to the sustaining system, the distributary system and the regulating system in an organism. The sustaining system in an organism consists of mouth, gullet, stomach and intestines. It is by means of this system that food is digested and the whole organic machine is sustained. Society has its own sustaining system and it is the productive system comprising the manufacturing districts and agricultural areas. The distributary system in an organism consists of the blood vessels, heart, arteries and veins and they carry blood to all parts of the body. Means of communication and transport in the social structure correspond to the distributary system in an organism. What the arteries and veins mean to the human body roads, railways, post and telegraph services mean to society." Finally, the re-

gulating system is the nerve-motor mechanism which regulates the whole body. Government in the body politic, regulates and controls the activities of the individuals, and thus, it is analogous to the regulating system.

From these points of agreement, Spencer concludes that the State is an organism. But he himself admits that the identity between the two is not complete. There is one "extreme unlikeness" in the structure of the body politics and that of the animal organism. The animal organism, he says, is concrete in structure, i.e., its units are bound together in close contact and they form a concrete whole. The social body, on the other hand, is discrete. Its parts are separate and distinct, or, to quote Spencer, the units of the social body are free and "more or less widely dispersed."

Spencer also pointed out another difference between an organism and a social body. This difference, he admits, is very important because it "greatly affects our notion of the ends to be achieved by social organisation." He says that there is no "nerve sensorium" in the social body. That is to say, there is no single centre of consciousness in society as is found in the living body. In an organism, consciousness is concentrated in one definite part of the whole. In society, it is diffused or spread over the whole. Every individual member in society has his own conscience and he acts for himself independently of others.

But even these "fundamental" points of difference in the structure of the body politic and that of the animal organism did not deter Spencer from his thesis that the State is an organism. As a matter of fact, he built on those differences his theory of Individualism. He concluded that the State should leave the individual alone to pursue his own welfare, for "society exists for the benefit of its members, not its members for the benefit of society." Herbert Spencer did not, however, realise that his conclusion was the negation of the organic nature of the State.

**Other Advocates of the Organic Theory.** The organic theory lost its prestige after Albert Schaffle, the Austrian publicist, who emphasised at great length the anatomical, physiological, biological and psychological resemblances between society and the animal body. He asserted that society is an organism "whose protoplasm or unit is man, the State or government in the one corresponding to the brain in the other." Among others who have emphatically defended the organic theory are the French writers, notably, August Comte, Fouillee and Rene Worms. Comte described human society as the highest stage in organic evolution, "embodying the completest development, of that natural harmony or organisation and action...." Rene Worms says that "the anatomy, physiology, and pathology of society possess striking similarities to the structure, function and pathology of living beings." But the attempts to draw "literal" analogies between society and living organisms have now been abandoned. Today, the organic conception of the State "has survived (with insigni-

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he drew "a parallel between the up and down lines of a railway, which furnishes the circulation of commodities in the social organism, and the arteries and veins of an animal, money being the blood corpuscles and the telegraph wires the nerves."



ficant exceptions) only in the older Hegelian form: the State an end in itself; its evolution controlled by its own laws; its functionally differential parts, interdependent and inseparable, all existing for and dependent upon a vigorous life of the corporate national life."<sup>41</sup>

**Evaluation of the Organic Theory.** There are two points of view about the organic nature of the State. The organic analogy has, no doubt, a useful purpose to serve as it emphasises the unity of the State. The State is not a mere aggregation of people. It is a social unity. Man cannot lead a life of isolation. Dependence is his very psychology and individuals depend on each other and on the State as a whole. The welfare of each is involved in the welfare of all. He cannot be separated from society, just as a hand or a leg, without losing its utility, cannot be separated from the body. The State has a collective life like an organism. The attainment of the common purpose, therefore, depends upon the proper performance by every individual of his functions or duties. Every citizen has social obligations to himself, to his family, to his neighbours, and to the society of which he is a unit.

So far we agree and accept the proposition that the State is like an organism. But the farther these analogies are carried, the more misleading they become. The user of analogy tends to forget that the resemblances he notices hold good only within the limits where they overlap. The objects compared are plainly not identical, as to compare identicals is useless, but possess besides their common features other traits that distinguish them.

At many points the comparison between society and an organism is exceedingly superficial. There is no similarity between the cells of an organism and the individuals who compose society. The cells have no independent life of their own. They are mechanical pieces of matter. Each is fixed in its place, "having no power of thought or will, and existing solely to support and perpetuate the life of the whole." The individuals, on the other hand, are independent, intellectual and moral human beings. They do not act like a machine. Each individual has a physical life independent of the whole and each strives to make his own destiny. It is true that man cannot be the best of himself independently of society, but he can live, if he so wishes, an independent life of his own. This is not possible in an organism. If parts are cut off from their parent body they die. Chop off a branch from a tree, a limb from a human body and both perish.

It is, again, true that the State has grown from similarity and simplicity to dissimilarity and complexity. But even common reason does not believe that it is subject to the same process of birth, growth and decay as an organism. An animal organism comes into existence by the union of two organisms. This is not the method of the birth of the State. The process of its growth is also not similar. Organisms grow from within and internal adaptation. They grow "unconsciously independent of volition, entirely dependent on its environment and the natural laws of the biological world."<sup>42</sup> The machinery of the State and

41. *Ibid.*, p. 411.

42. Gettell, R. G., *Introduction to Political Science*, p. 88.

its laws, on the other hand, change to adjust to the altered needs and requirements of the people. And all this change is brought about as a result of volition and conscious efforts of its members. "Its growth, if such it may be called, is largely the result of the conscious action of its individual members and is to a great extent self-directed."<sup>43</sup> Then, an organism dies. The State is not liable to death. It is permanent; it endures. To sum up, in the words of Jellinek, "Growth, decline and death are not necessary processes of State life though they are inseparable from the life of the organism. The State does not originate or renew itself as a plant or as an animal does."

The Organic Theory does not help us in solving the baffling, but the practical question of what the State should do. In fact, the Organic Theory has been used to support views on the province of the State ranging from Individualism to Socialism. Herbert Spencer uses it as a basis for the theory of *laissez faire* and limits the functions of the State only to the prevention of violence and fraud. The State should, according to Spencer, limit its activities to those particular functions for which it arose. From the "discreet" nature of the social body, he concluded, that every individual exists for his own good only and not for the happiness of the whole. In close contrast to Spencer's theory of Individualism are the supporters of extreme Socialism and absolutism of the State. Relying upon the organic nature of the State, these German writers maintained that "the State as the highest organism, is the important unit, and collective activity is the ideal of social progress."

**Conclusion.** Herbert Spencer's conclusion that individual should otherwise be left alone is a forced one. The Organic Theory, with all its analogies, in the form in which it is usually stated, is pregnant of dangerous results. "Some of these biological comparisons are ingenious and well stated; to many writers they have proved fascinating and seductive; to others they have constituted the basis of an argument for a theory of the State which would sacrifice individual to society." The central idea of the theory is to merge the individual in the social group and consequently regard him as a vulgar fraction. To repeat the words of Leacock, "As is the relation of the hand to the body, or the leaf to the tree, so is the relation of man to society. He exists in it, and it in him." What his relationship actually means, the world witnessed it in Hitler's Germany and Mussolini's Italy. Communist countries, like Soviet Russia and China, also amplify it. Jellinek has rightly said, "We had better reject the theory in toto lest the danger from the larger amount of falsity in the analogy should outweigh the good in the little truth it contains."

### SUGGESTED READINGS

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|---------------|---|
| Barker, E.    | : <i>Political Thought in England: Spencer to Present Day</i> , pp. 175-83. |
| Barker, E.    | : <i>Principles of Social and Political Theory</i> , pp. 42-77.             |
| Elie Kedourie | : <i>Nationalism</i> .  |

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43. Garner, J. W., *Political Science and Government*, p. 220.

- Follet, M. P. : *The New State*, Chaps. I-IV.
- Garner, J. W. : *Introduction to Political Science*, Chaps. III-IV.
- Garner, J. W. : *Political Science and Government*, Chaps. IV-VII.
- Gettel, R. G. : *Introduction to Political Science*, Chap. II.
- Gilchrist, R. N. : *Principles of Political Science*, Chap. II.
- Gooch, G. P. : *Nationalism*.
- Jenks, E. : *The State and the Nation*, pp. 6-7.
- Hayes, C. J. H. : *Essays on Nationalism*.
- Kohn, Hans : *The Ideal of Nationalism*.
- Kohn, Hans : *Nationalism and Liberty*.
- Laski, H. J. : *Grammar of Politics*, Chap. VI.
- Laski, H. J. : *The State in Theory and Practice*, Chap. II.
- Leacock, S. : *Elements of Political Science*, Chap. I.
- MacIver, R. M. : *The Modern State*, Introduction.
- MacIver, R. M., and Page, C. H. : *Society: An Introductory Analysis*.
- MacIver, R. M. : *The Web of Government*.
- Mill, J. S. : *Representative Government*.
- Muir, R. : *Nationalism and Internationalism*, Chap. II.
- Shafer, Boyd, C. : *Nationalism, Myth and Reality*.
- Sidgwick, H. : *The Elements of Politics*, Chap. XIV.
- Wilson, W. : *The State*, pp. 27-30.
- Zimmern, A. E. : *Nationality and Government*.



## Origin of the State

*The origin of the state*

**Introductory.** While introducing the State in the first Chapter we said that it originated in the bare needs of life and continues in existence for the good life of man. But it is shrouded in mystery when and how the State came into existence. The recent researches in the sciences of Anthropology, Ethnology, and Comparative Philology throw some light on the subject, but all this is not sufficient to offer a matter of fact explanation of the origin of the State. Speculation is, then, the only alternative and we examine a number of theories that have been advanced from time to time varying with the credulity of the age. The most important of these theories are:

1. The Theory of Divine Origin.
2. The Theory of Force.
3. The Theory of the Social Contract.
4. The Patriarchial and Matriarchial Theories.
5. The Historical or Evolutionary Theory.

*The rest are regarded as fallacious theories and therefore rejected.*

The Historical or Evolutionary Theory is now accepted as the correct theory of the origin of the State. The Patriarchial and Matriarchial Theories, which seek to explain that family is the nucleus of the State and whether father or mother had really been the head of the family in ancient times, are not separate theories of the origin of the State. They form part of the accepted Historical or Evolutionary Theory, although we have treated them separately for clarity and proper understanding. The theories of Divine origin, Force and the Social Contract are speculative and stand rejected. But it does not mean that they have no practical utility. Each one of these theories contains some element of truth and, thus, aids us in penetrating the mysteries of the past and helps to find out how and why the State came into existence. To examine and reject a speculative theory is a means of arriving at truth. It is only by groping in the darkness that we hope to reach the light. Leacock has rightly said that the "rejection of what is false in the speculative theories of the past will aid in establishing more valid conclusions on the residual basis of what is true." What exists is never new. It is a monument of human effort, the result of prolonged activity. We cannot, therefore, understand any contemporary institution without some knowledge of its genetic background. Speculative theories

exhibit the spirit of the time in which they flourished and are consequently the index of the people, their thoughts, their environments and describe the forces that moulded and shaped the practices of the State. Finally, speculative theories led to the development of political thought. Men of merit thought and considered, discussed and criticised the various theories presented and all this paved the way for further developments in political thinking. The Social Contract theory replaced the theory of Divine Origin and the former was replaced by the Historical or Evolutionary theory.

### THE THEORY OF DIVINE ORIGIN

**The Theory Explained.** The theory of Divine Origin, (though) one of the earliest in the origin of the State, has a simple explanation to offer. In fact, it is a theory of political authority and not a theory of the origin of the State. The State, its advocates maintain, is created by God and governed by His deputy or vice-regent. It was His will that men should live in the world in a State of political society and sent His deputy to rule over them. The ruler is, therefore, a divinely appointed agency and he is responsible for his actions to God alone. As the ruler is the deputy of God, obedience to him is held to be a religious duty and resistance a sin. The advocates of the Divine Origin Theory in this way make the ruler above the people as well as law. Nothing on earth can limit his will and restrict his power. His word is law and his actions are always just and benevolent. To complain against the authority of the ruler and to characterise his actions unjust is regarded a sin for which there is a divine punishment.

*History of the theory* The theory of the Divine Origin of the State is as old as Political Science itself. There is sufficient evidence to prove now that early States were based on this conception and all political authority was connected with certain unseen powers. The earliest rulers were a combination of priest and king or the magic man and king. The authority and reverence which a ruler commanded depended upon his position as a priest or a magic man. Religion and Politics were so inextricably mixed up in the primitive society that not a hazy line of demarcation could be drawn between the two.

Even today, the State of Pakistan does not seem to draw a distinction between religion and politics. Sir Mohammad Zafarullah Khan, the then Pakistan Foreign Minister, while speaking on the Objective Resolution in the Pakistan Constituent Assembly in 1949, said: "Those who sought to draw a distinction between the spheres of religion and politics as being mutually exclusive put too narrow a construction upon the functions of religion." The now abrogated Constitution declared Pakistan an Islamic Republic to be governed in accordance with Islamic principles. Even the 1962 Constitution enjoins that no law shall be made in Pakistan which is repugnant to Islam. The division of India into Pakistan and Bharat (Hindustan) was, indeed, a return to the identification of the State with religion.

The theory that the State and its authority has a Divine Origin

1. *The Statesman*, Northern India Edition, New Delhi, March 14, 1949.

and sanction finds unequivocal support in the scriptures of almost all religions in the world. In the *Mahabharata*, it is recounted that the people approached God and requested him to grant them a ruler who should save them from the anarchy and chaos prevailing in the state of nature. "Without a Chief, O Lord", they prayed, "we are perishing. Give us a Chief whom we shall worship in concert and who will protect us." The Islamic State, too, was theocratic. The theory of Divine Origin, however, received a new impetus with the advent of Christianity. "Render Unto Caesar the things that are Caesar's" said Jesus Christ, and Paul amplified this in his Epistle to the Romans, which has been quoted by writers time out of mind in support of the theory of Divine Origin. We are, thus, told, "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive themselves damnation...."

The theory of Divine Origin so enunciated and believed and accepted, thus, implied:—

- (1) that God deliberately created the State and this specific act of His grace was to save mankind from destruction;
- (2) that God sent his Deputy or Vice-Regent to rule over mankind. The ruler was, therefore, a divinely appointed agency and he was responsible for his actions to God alone whose Deputy the ruler was. All were ordained to submit to his authority and disobedience to his command was a sin for which there was divine punishment.

**The Divine Rights of Kings.** Here were direct and precise instructions to the faithful. Although the Roman Empire was a pagan empire, Paul had ordered Christians to accept its authority as derived from God and thereby admitted that the State, whatever the personal morality of its monarch, was divinely ordained. During the Middle Ages in Europe the theory of the Divine Origin of the State was transformed into the doctrine of Divine Rights of Kings. The temporal authority having emerged victorious over the spiritual authority claimed that it was a divine favour to the vice-regents of divine authority. Even today the Queen of England is a Queen "by the Grace of God".

The Stuarts in England found refuge in the doctrine of the Divine Rights of Kings and its leading exponent was James I. Sir Robert Filmer was its enthusiastic supporter. Bousset advocated it in France and supported the despotism of Louis XIV. It was claimed that Kings ruled by divine right and the subjects had no recourse against them. "Kings", wrote James I, "are breathing images of God upon earth" and disobedience to their commands was disobedience to God. "As it is atheism and blasphemy to dispute what God can do, so it is presumption and high contempt in a subject to dispute what a King can do or to say that a King cannot do this or that." Even rebellion in the cause of religion was

2. Refer to U. Ghoshal's *A History of Indian Political Theories*, p. 176.

3. *Romans*, xiii, 1-7.



deemed a sacrilege because "the State of monarchy is the supremest thing upon earth; for Kings are not only God's lieutenants upon earth, and sit upon God's throne; but even by God himself they are called Gods." As men are children of God, so are men children of the King and they owe him an equal obedience. Without a King there could be no civil society, it was argued, as the people were a mere "heedless multitude" incapable of making laws. All law proceeded from the King as the divinely instituted law-giver of his people. The only choice for the people was, therefore, submission to the authority of the King or complete anarchy. It was asserted that the King could not be held answerable for his actions to the human judgment. He was responsible to God alone. "A bad King will be judged by God but he must not be judged by his subjects or by any human agency" for enforcing the law, such as the estates or the courts." The law, it was claimed, resided ultimately "in the breast of the King."

The main points in the doctrine of the Divine Rights of Kings may, thus, be summed up:—

1. Monarchy is divinely ordained and King draws his authority from God;
2. Monarchy is hereditary and it is the divine right of a King that it should pass from father to son;
3. King is answerable to God alone; and
4. Resistance to the lawful authority of a King is a sin.

The theory of the Divine Rights of Kings originally used in the Middle Ages to serve as bulwark against the claims of the Church Fathers was later used by Kings and their supporters to defend their existence against the political consciousness of the people—when the people claimed that ultimately power and sovereign authority rested with them.

**Evaluation of Theory.** That the State is divinely created does not find any place in present political thought. The State is essentially a human institution, and it comes into existence when a number of people occupying a definite territory organise themselves politically for achieving common ends. The laws of the State are made by men and enforced by them. The State, therefore, originated in the bare needs of the life of man and continues in existence for the satisfaction of those needs. To accept it as a creation of God is to defy nature itself and to exalt it to a position above criticism and change. (The Divine Origin theory is, therefore, dangerous as it justifies the arbitrary exercise of royal authority by holding that authority has a religious sanction and origin, and Kings are the vicars of God.) When the ruler is made responsible for his actions to God, and law is held to reside ultimately "in the breast of the King," it is tantamount to preaching absolutism and making the King a despot. Even if it be conceded that the King is the vice-regent or deputy of God, then, how can the existence of a bad King be justified? History abounds in examples of bad and vicious Kings. God personifies virtue and benevolence and so should be His deputy. It is, accordingly, a bad logic to accept the dogma of James I that "Kings are breathing images of God upon earth." Even in the scriptures the theory does not find unequi-

vocal support. The Bible tells us, "Render unto Caesar the things that are Caesar's and unto God the things that are God's." This saying of Christ does not justify the Divine Origin of the State. Finally, the theory does not consider any other form of government except monarchy and that, too, absolute monarchy. Such a form of government is antagonistic to the democratic ideal which accepts consent as the basis of the State.

The Divine Origin theory is, accordingly, dismissed as an explanation of the origin of the State. At the same time, the theory commands a certain value. We cannot ignore the part which religion played in the development of the State. The early rulers combined unto themselves the authority and functions of a king and a priest. Law had a religious sanction and religious law appealed to primitive man more than human law. Obedience to the State was deemed a religious duty and religious worship was supported by government. Belief in common religion was, thus, a great combining factor which welded the people in pursuit of common ends. "It taught men to obey" when they were "not yet ready to govern themselves." Finally, the theory of Divine Origin adds a moral tone to the functions of the State. "To regard the State as the work of God is to give it a high moral status, to make it something which the citizen may revere and support, something which he may regard as the perfection of human life."

### THE THEORY OF FORCE

**The Statement of the Theory.** The theory of Force is another fallacious theory, but historically important, which is offered as an explanation of the origin and meaning of the State. There is an old saying that 'war begat the king,' and true to this maxim the theory of Force emphasises the origin of the State in the subordination of the weak to the strong. The advocates of the theory argue that man, apart from being a social animal by nature, is quarrelsome. There is also a lust for power in him. Both these desires prompt him to exhibit his strength and in the early stages of the development of mankind a person physically stronger than the rest captured and enslaved the weak. He collected in this way a band of followers, fought with others, and subjugated the weak. Having increased the number of his followers, over whom he exercised undisputed authority, he became a tribal chief. A clan fought against a clan and a tribe against a tribe. The powerful conquered the weak and this process of conquest and domination continued till the victorious tribe secured control over a definite territory of a considerable size under the sway of its tribal chief, who proclaimed himself the King. Leacock gives a matter-of-fact explanation of the Force theory when he says that "historically it means that government is the outcome of human aggression, that the beginnings of the State are to be sought in the capture and enslavement of man by man, in the conquest and subjugation of feebler tribes, and generally speaking in the self-seeking domination acquired by superior physical force. The progressive growth from tribe to kingdom, and from kingdom

4. Gettell, R. G., *Introduction to Political Science*, p. 81.

5. Gilchrist, R. N., *Principles of Political Science*, p. 74.

to empire is but a continuation of the same process." The theory, in fine, tells that the State is primarily the result of forcible subjugation through long continued warfare among primitive groups and "historically speaking," as Jenks says, "there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare."

Once the State had been established, Force, which had hitherto been utilised for subjugating others, was used as an instrument for maintaining internal peace and making it secure from any kind of external aggression. But it was not sufficient. Force was used as the sinews of war and power and in a bid for superiority, one State fought against another eliminating the weaker and only those survived which either could not be conquered, or no venture was made to conquer them as they were comparatively powerful. The theory of Force, therefore, traces the origin and development of the State as a result of conquest and "justifies its authority by the proposition that might is right." The theory has, thus, four implications. First, force is not only a historical factor, but is the present essential feature of the State, secondly, that the States were born of force only, thirdly, that power is their justification and *raison d'être*, and, finally, that the maintenance and extension of power within and without is the sole aim of the State.

**Theory used in support of diverse purposes.** The theory of Force has been advanced by different writers for advocating their own point of view. It was first used by the Church Fathers in the mediæval period to discredit the State, and to establish the supremacy of the Church. They claimed that Church was divinely created whereas the State was the outcome of brute force. Gregory VII wrote in 1080: "Which of us is ignorant that kings and lords have had their origin in those who, ignorant of God, by arrogance, rapine, perfidy, slaughter, by every crime which the devil agitating as the prince of the world, have continued to rule over their fellow-men with blind cupidity and intolerable presumption."

In modern times the **Individualists** adopted the theory to protect individual liberty against government encroachment. They characterised the State as a necessary evil and argued that the State should let the individual remain alone and it should not interfere in what he does, except for maintenance of internal peace and external security. The Individualists base their arguments on the principle of the **survival of the fittest** and thereby try to prove that it is only the strong who survive and the weak go to the wall. The **Socialists**, on the other hand, hold that the State is the outcome of the process of aggressive exploitation of the weaker by the stronger; the latter constituting the propertied class who had ever manned administration and directed machinery of the government to their own benefit. The existing system of industrial organisation, it is maintained, hinges upon force because "a part of the community has succeeded in defrauding their fellows of the just reward of their labour." They further argue that force is the origin of civil society and government re-

6. Leacock, E., *Elements of Political Science*, p. 32.

7. Jenks, E., *A Short History of Politics*, p. 71.

8. Gettell, R. G., *Introduction to Political Science*, p. 79.



presents merely the coercive organisation which tends to curb and exploit the working class in order to maintain the privileged position of the propertied class. The theory of Socialism is, therefore, a revolt against the State, as it is the product of force and that power is its justification and *raison d'être*. Karl Marx, accordingly, concluded that the State must ultimately 'wither away.'

During recent times the theory of Force had been a favourite theme of political philosophy with German writers. Imbued with the desire to make their country a Greater Germany, they lavished praise on force and considered its indiscriminate use as the most important factor for the solidarity of the nation. Treitschke said that "the State is the public power of offence and defence, the first task of which is the making of war and the administration of justice." War, he said, consolidates a people, reveals to each individual his relative unimportance, causes factional hostilities to disappear, and intensifies patriotism and national idealism. "The grandeur of history," he further maintained, "lies in the perpetual conflict of nations" and "the appeal to arms will be valid until the end of history." General Von Bernhardt held Might as "the supreme right, and the dispute as to what is right is decided by the arbitrament of war. War gives a biologically just decision, since its decisions rest on the very nature of things." Nietzsche preached the doctrine of the will to power and superman. The individual who can command the highest admiration, according to this doctrine, is the strong man who compels other men to act in fulfilment of his will. Nietzsche, while glorifying the "masterly" virtues of man, says that a truly moral person "has no place for the vulgar and slavish virtue of humility, self-sacrifice, pity, gentleness." Hitler and Mussolini put into real practice the doctrines of these writers. They considered force as the normal means for maintaining a nation's prestige, cultural influence, commercial supremacy in the world, and for holding the allegiance of citizens at home. This general doctrine of political authoritarianism, both with Hitler and Mussolini, became "a creed of dominance by intimidation—militancy in international relations and forcible suppression of political dissent in domestic government." Hitler and Mussolini pushed mankind into another World War causing unprecedented misery, havoc and destruction. The United Nations Organization was established after the War to save the succeeding generations from the scourge of war. Yet there is no end to war. There is a show of might everywhere and there is a never-ending race between all powers, big and small, to invent and manufacture deadly weapons of warfare, some to defend, others to offend.

**Criticism of the Theory.** Force, indeed, has played an important part in the origin and development of the State. Some of the greatest empires of today have been established through 'blood and iron'. We may see even more of this 'blood and iron' in the days to come. Force is an essential element of the State. Internally, the State requires force to ensure obedience to its commands. Externally, it is necessary to repel aggression and to preserve the integrity of the State. Without force no State can exist and sovereignty of the State always rests ultimately on

force. Kant said, "Even a population of devils would find it to their advantage to establish a coercive State by general consent."

But, all this does not sufficiently explain the origin of the State. Force is, no doubt, one of the factors which contributed to the evolution of the State. It is, however, not the only one, nor the most important factor, and the theory of force "errs in magnifying what has been only one factor in the evolution of society into the sole controlling force."<sup>10</sup> Force is, also, not the only basis of the State. Something other than force is necessary in binding the people together. It is will, not force, which is the real basis of the State. Sheer force can hold nothing together because "force always disrupts—unless it is made subservient to common will."<sup>11</sup> Force we do need in maintaining the State, but its indiscriminate use cannot be permitted. It must be used as a medicine and not a daily diet as force is the criterion of the State and not its essence. If it becomes the essence of the State, the State will last so long as force can last. Indiscriminate use of force has always been the forerunner of revolutions overthrowing governments which rest on force. Since State is a permanent institution, moral force can only be the permanent foundation of the State. T. H. Green has beautifully said that "it is not coercive power as such but coercive power exercised according to law, written or unwritten for maintenance of the existing rights from external or internal invasions, that makes a State." Might with rights in this way is as lasting as human minds on which it depends.

Moreover, the Theory of Force unduly emphasises the principle of the **survival of the fittest**. It means that might is right and those who are physically weak should go to the wall. It is dangerous to employ such a principle in the internal existence of the State. Might without right is antagonistic to individual liberty. The State is duty bound to protect equally the weak and the strong and create equal opportunities for all. Externally, if might is the supreme right, and the dispute as to what is right is decided by the arbitrament of war, there can be no international peace. Every State will be at perpetual war with the rest. This is a condition of chaos, pure and simple, endangering the peace and security of the world. The attention and efforts of every State will be directed towards war-preparedness and to win the war, if it comes. War, which is an **alias** for murder, glorifies the brute force suppressing the moral forces. This is the mean self of man and not his real self. Is this the end for which the State exists?

### THE THEORY OF SOCIAL CONTRACT

**The Theory Explained.** Foremost in historical importance is the Theory of Social Contract. It postulated a **state of nature** as the original condition of mankind and a **social contract**, deliberately and voluntarily made as the means of escape therefrom. Some political thinkers who advanced the theory of Social Contract were of the opinion that the state of nature was **pre-social**; whereas others regarded it **pre-political**.

10. Leacock, S., *Elements of Political Science*, p. 33.

11. MacIver, R. M., *The Modern State*, p. 222.

But whatever it was, the state of nature was antecedent to the institution of government, that is, prior to the establishment of government. The state of nature was not an organized society. Each man living therein led a life of his own, uncontrolled by any laws of human imposition. Nor was there any human authority to regulate his relations with others. Men living in the state of nature were subject only to such regulations as nature was supposed to prescribe for them. This code of regulations was given the name of the **law of nature**, or **natural law**.

No two thinkers on the Social Contract Theory are one as to the conditions that prevailed in the state of nature. Some described it as a state of "ideal innocence and bliss". Others gave a gloomy and dismal picture and characterised it as a state of "wild savagery", where might was right. Some others considered it as a state of "insecurity", though not of savagery, accompanied by some tangible inconveniences. But whatever it was, all thinkers were agreed that those who lived in the state of nature were ultimately compelled, for one reason or the other, to abandon it and substitute the state of nature by a **civil society** or a **body politic** where each man led a life of union with his other fellowmen. The law of nature, which regulated the conduct of the individuals who lived in the state of nature, was replaced by man-made laws.

Thus emerged civil society and it was the result of a mutual **consent** or **contract**; man taking upon himself the duty of observing and obeying all those laws which assured the safety and protection of all other members of the newly organised community or **body politic**. These laws were prescribed by the mutually agreed authority. Human law was, accordingly, substituted for the natural law and in return for **natural rights** every man found "himself clothed with **social rights**". These rights were maintained and guaranteed by the mutually established authority.

All this process of development was the result of a contract or "bargain dictated by the individual's own interest, an exchange of obligations in return for privileges." What were the terms of the contract, who were the parties to the contract, and what was the extent of the powers of the authority mutually appointed to enforce the laws of the **body politic**, there were sharp differences of opinion on all those points as each thinker had sought to establish different conclusions and vindicate different principles. All advocates of the Theory of Social Contract were, however, unanimous on the essential idea that the State was a deliberate human creation, the result of a consent or contract.

There are, thus, three essential elements in the Theory of Social Contract. First is the state of nature wherein man had not organised himself in bonds of political cohesion and, therefore, in a political society. He was independent and free and subject to no obligations and man-made laws. He simply obeyed the law of nature. What did the law of nature precisely mean, it was his own interpretation and determination. Such a condition in the state of nature created conditions of uncertainty for all as none felt secure both in his person and property. No man could ever endure such conditions of life and ultimately he decided to quit the state of nature. This he did by common consent or agreement or contract with his fellowmen who lived with him in the state of nature. This is the second element in the Theory of Social Contract. The third is



that as a result of common consent or contract a civil society was established where laws of the State and civil rights prevailed in place of natural law and natural rights. The final element is, therefore, the process by which one way of life was given up for another way of life.

**History of the Theory of Social Contract.** The Theory of Social Contract is as old as political thought itself and it had found adequate support both in the East and West. Kautilya, the Minister of Chandragupta Maurya, elaborated it in his *Arthashastra*. He wrote, "People suffering from anarchy, as illustrated by the proverbial tendency of a large fish swallowing a small one, first elected Manu to be their King, and allotted one-sixth of the grains grown and one-tenth of their merchandise as sovereign's dues. Supported by this payment Kings took upon themselves the responsibility of maintaining the safety and security of their subjects."<sup>12</sup> The Greek philosopher Plato dealt with the Contract Theory in his work the *Crito* and the *Republic*. Aristotle, on the other hand, repudiated the theory when he said that the State was a natural institution. Roman Law, which exercised so powerful an influence from the twelfth century onwards, made it clear that most of the positive rules obeyed by men were created by contract. The feudal relationship between the lord and the vassal was essentially a contractual relationship. The Church Fathers, in their early writings, gave some support to the theory, although they abandoned it eventually. It was only during and after the Middle Ages that the idea of Social Contract found a significant place in the discussions of the political thinkers. Manegold maintained that the King could be deposed if "he violates the agreement according to which he was chosen..."<sup>13</sup>

In the sixteenth and seventeenth centuries the supporters of the Social Contract Theory multiplied and there was more or less universal acceptance of the doctrine. Hooker was the first scientific writer who gave a logical exposition to the theory of the Social Contract, though he employed it to defend the Established Church against the attacks of its enemies. The theory also received impetus from the writings of Hugo Grotius, the Dutch jurist. But it found real support at the hands of Hobbes, Locke and Rousseau. In our discussions of the theory of Social Contract we are primarily concerned with the political philosophy of these three writers, collectively known as the 'contractualists'.

### THOMAS HOBBS, 1588-1679

Thomas Hobbes, sometime tutor to Charles II of England, published his book, the *Leviathan*, in 1651. In this book he gave a striking exposition of the theory of Social Contract. Hobbes had no mind to give the theory of the origin of the State. He wrote, while the memory of the Civil War and the King's (Charles I) execution was still vivid, to justify the rule of the Stuarts and believed that England could be saved only by absolute monarchy. His object was to defend the absolute powers

12. *Arthashastra*, Bk. I, Ch. XIII.

13. As quoted in Sabine's *A History of Political Theory*, p. 241.

14. Refer to Richard Hooker's *Laws of Ecclesiastical Polity*.

of the monarch and he used the doctrine of the Social Contract to support it.

Some critics of Hobbes have stigmatised him as a "pensioner" of the Stuarts. This is an exaggeration. Yet, it remains true that Hobbes supported and defended Stuart despotism when there was an irresistible opposition against such a power. He was convinced that nothing could be too high a price to pay for the preservation of order and that the best security for this was to be found in the unlimited authority of the King.<sup>15</sup>

**The State of Nature.** Hobbes began his thesis with the state of nature, which he characterised as the **pre-social** phase of human nature. The state of nature, as Hobbes described it, was a condition of unmitigated selfishness and rapacity. Men had no sense of right and wrong and they fell upon each other with savage ferocity. There was a perpetual and restless desire with them to satisfy their appetites and desires with a craving for gain and glory which came to an end only with their death. Natural rights which men enjoyed in the state of nature, were nothing short of might and natural liberty was nothing more than "the liberty that each man hath to use his own power for the preservation of his own nature." They did not know pity and compassion and if ever anyone did a good act it was the result of his "love of power and delight in the exercise of it."

From this analysis of the state of nature, Hobbes concluded that man was not at all social; indeed he found "nothing but grief in the company of his fellows"—all being almost equally selfish, self-seeking, cunning, egoistic, brutal, covetous and aggressive. The state of nature was a condition of perpetual war "where every man is enemy to every man" and where the rule of life was "only that to be every man's that he can get; and for so long as he can keep it." When men in the state of nature were like hungry wolves each ready to devour the other, their lives were "solitary, poor, nasty, brutish and short."

**The Contract.** These conditions were really intolerable and could not be left to continue indefinitely. Men naturally wished for peace and security, and to escape from the misery and the horror of their natural condition, they consented or contracted among themselves to form a civil society or a **Commonwealth**, which would ensure to each security and certainty of life and property. By mutual covenant they agreed to surrender their natural rights into the hands of a common superior and obey his commands. The covenant was of each with all and of all with each. Each man said to every other man:

"I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorise all his actions in like manner... This is the gener-

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15. "His (Hobbes') principles were at least as contrary to the pretensions of the Stuarts whom he meant to support as to those of the revolutionists whom he meant to refute and more contrary to both than either royalist or parliamentarian was to the other." The friends of the king might well feel that Hobbes' friendship was as dangerous as Cromwell's enmity." Sabine, G. H., *A History of Political Theory*, p. 456.

ation of that great Leviathan, or rather (to speak more reverently) of that Mortal God, to which we owe under the immortal God, our peace and defence."

In this way, individuals **surrendered** their natural rights to some particular man or assembly of men. /The person or assembly of persons to whom they surrendered their natural rights became sovereign and the covenanting individuals who agreed to submit to the authority of the sovereign became his **subjects**./ The sovereign was not a party to the contract. Others had made a covenant to obey him; he had made no covenant to obey them. Consequently, the sovereign did not subject himself to conditions. [Hobbes maintained that only a compact binding each and all to unquestioning obedience to a sovereign could really establish a stable commonwealth. Any introduction of 'condition,' in his opinion, was likely to create uncertainty and indefiniteness leading, again, to disputes incapable of decisive settlement, and so to anarchy. The sovereign, thus, profited from the contract without being a party to it. For the future, however arbitrary that rule might be, the people retained no ultimate right to rise against the sovereign authority. The authority of the sovereign was final and irrevocable.

Here are the highlights of Hobbes' Social Contract:

1. It is a social contract and **not** a governmental contract. The sovereign was not a party to the contract as he was the creation of the contract or, as Dunning puts it, "A superior, or sovereign, exists only by virtue of the pact, not prior to it." Individuals living in the state of nature, all equal, agreed with one another to give up their natural rights of doing anything that pleased them, and to possess anything that they could take and hold to a common authority and this common authority became by that fact their superior.

2. As the sovereign was not a party to the contract, he did not subject himself to any conditions; his authority was **absolute** and **unlimited**. All his subjects must obey him, otherwise there would be conflict, war, and a return to the wretchedness of the state of nature. "The only way," Hobbes said, "to erect such a common power... is to confer all their power and strength upon one man or upon one assembly of men, that may reduce all their wills by plurality of voice, unto one will."

3. The contract became **irrevocably** binding on the whole community as a **perpetual** social bond, for the individuals had left no rights to themselves, except the right to self-preservation. If the sovereign lost his power and was conquered by another and submitted to his authority, the subjects became the subjects of the conqueror. "But if he be held prisoner or have not the liberty of his body, he is not understood to have given away the right of sovereignty; and therefore his subjects are obliged to yield obedience to the magistrates formerly placed, governing not in their own name, but in his."<sup>16</sup>

4. Hobbes denied to the people their right to revolt against the authority of the sovereign. There could happen no breach to the covenant, even if his authority became arbitrary and despotic. In fact,



the sovereign could never be wrong and his actions could not be unjust. He could not be justly accused by the subjects and "Whatsoever the sovereign doth is unpunishable by the subject."

5. Law was a **command** of the sovereign and he was the sole **source** of law. "Civil law is to every subject those rules which the commonwealth hath commanded him by word, writing or other sufficient sign of the will to make use for the distinction of right and wrong." The laws of the sovereign could never be unjust or immoral, "for the law is all the right reason we have, and...is the infallible rule of moral goodness."

6. Liberty was the **gift** of the sovereign in whom the will of the whole community was unified. The sovereign had "the whole power of prescribing the rules, whereby every man may know, what goods he may enjoy, and what actions he may do, without being molested by any of his fellow-subjects." In short, the liberty of the subjects could properly be thought of only in relation to the laws of the commonwealth. Liberty, according to Hobbes, consisted in:

- (i) whatever the sovereign, that is, the law of the land, had not forbidden; and
- (ii) what could not, by the nature of the original pact, be given up, that is, the right of self-preservation, which could not be surrendered. "Without injustice, therefore, the individual may, in disobedience to the sovereign's command, refuse to kill himself, resist assault, refuse to accuse himself of an offence that would jeopardise his life, and with certain qualifications refuse to serve in the army."<sup>17</sup>

The liberty of the subjects, thus, consisted in (i) what the sovereign permitted; and (ii) the right of self-preservation which was retained by the people.

This is how Hobbes gave to his sovereign absolute, inalienable, indivisible and unlimited authority.<sup>18</sup> Hobbes' sovereign, so defined, need not necessarily be one man. Sovereignty might be located in an individual man and his successors (monarchy), or a group of men (aristocracy or democracy, according to the size of the group). But his preference for monarchy was an admitted fact. Monarchy, in the opinion of Hobbes, was not the legitimate form of government, but it was the best form. As a man, the king would be selfish like all men, but the self-indulgence of one was cheaper, he claimed, than the self-indulgence of many. "In a monarchy the private interest was the same with the public." A king could not be rich, glorious or secure, if his people were poor, contemptible or weak. Since he had got at the top, all his ambition lay in strengthening the State whereas members of a democratic or aristocratic assembly were liable to be prompted by ambition to intrigue against the State in the hope of seizing power. Their designs were a source of great danger to the community. (Hobbes' conclusion was that, "other governments were

17. Dunning, W. A., *A History of Political Theories from Luther to Montesquieu*, p. 288.

18. Sovereign's power is limited only by the individual's right to self-preservation.

compacted by the artifice of men out of the ashes of monarchy after it had been ruined by seditions."

**Evaluation of the Theory.** (Hobbes was the first Englishman to present a logical system of political philosophy. So skilfully did he blend the current political thought in his system of political administration and adapt it to his ends that he at once came in the front rank of political thinkers and "his theory became from the moment of its appearance the centre of animated controversy and enormous influence throughout Western Europe.") Hobbes has been criticised vehemently. His ideas of what constituted a sound scientific method were those of his time and are now long out of date. Yet, his philosophy illustrates Bacon's saying that, "Truth emerges more easily from error than from confusion."

Nothing like the state of nature ever existed and there is absolutely no evidence in history to show the State to have emerged by mutual and deliberate agreement. The Social Contract is impossible, for the history of primitive societies has shown conclusively that men move from status to contract. Hobbes' claim is just the other way that men move from contract to status. Nor is man so inherently selfish, self-seeking and aggressive as Hobbes has described him. Man is a rational and social being. Hobbes' dogma that man is by nature unsocial and "enemy of his kind" is diametrically opposed to the Aristotelian dogma, that man is a social animal. Society exists by nature and necessity and it has existed since man made his first appearance on this planet. As man is social; he cannot lead an isolated life and his sociability makes him a rational being, co-operative and sympathetic towards his fellow-men. Hobbes' ethical and political philosophy is based wholly on egoism and hedonism.

(Hobbes described the state of nature as pre-social and pre-political. At the same time, he said that man enjoyed in the state of nature natural rights. Rights always arise in a society. If there is no society, as Hobbes' state of nature was, how can there exist any rights? Every right has a corresponding obligation. But Hobbes' man in the state of nature had no obligations; he did anything that pleased him, and possessed anything that he could take and hold against all others. Again, according to Hobbes, there was a surrender of rights. But it is against commonsense to believe that man will surrender all his rights. Hobbes himself becomes inconsistent when he says that man retains to himself the right of self-preservation. There cannot be a complete surrender and then reservation of a right.

A contract is always between two parties; it cannot be unilateral or one-sided. Hobbes makes the sovereign the beneficiary of the contract, but not a party to it. And the contract is perpetual and irrevocable. All this transaction hardly appeals to human reason. Hobbes also fails to distinguish between State and government. He confounds the legal absolutism of the State with governmental absolutism, and he does not see that changes in the forms of government do not imply the dissolution of the State.

19. "In case anarchy does actually come upon a society, and the sovereign no longer possesses the power to give the subjects that protection which is for the sole end of the social pact their obligation to the sovereign *ipso facto* ceases." Dunning, *op. cit.*, p. 289.

But when all this is said, Hobbes' *Leviathan* is of the very greatest importance. (It is, in the words of Professor Oakeshott, "the greatest, perhaps the sole, masterpiece of political philosophy written in the English language.") This is an exaggeration, yet, in spite of the fury of his critics, Hobbes continues to be widely read and makes a powerful appeal. The *Leviathan* is the first statement of complete sovereignty in the history of political thought. Hobbes contradicted the old concept of justice and maintained that justice is created by law and that law is not the reflection of justice. Hobbes is also an individualist in the sense that for him the world is and must always be made up of individuals. He does not believe in the people, common will or general will or common good.

### JOHN LOCKE, 1632-1704

If Hobbes championed the absolute sovereignty of the monarch, John Locke, another English political philosopher, espoused the cause of limited monarchy in England. His theory was, in fact, a justification of the Revolution of 1688; and deposition of James II. The theory of John Locke is found in his two *Treatises on Civil Government* published anonymously in 1690 wherein he defended the ultimate right of the people to depose the monarch from his authority if he ever deprived the people their "liberties and properties."<sup>169</sup> Locke, in reality, sought, as he admitted, to 'establish the throne of our great Restorer, our present King William, and make good his title in the consent of the people.' In the words 'in the consent of the people' and this forms the key-note of Locke's theory. Civil power, according to Locke, is based upon consent.

**The State of Nature.** Locke, too, started with the state of nature. But his state of nature was pre-political and not pre-social and, as such, it did not present to him such a dismal state of affairs as it did to Hobbes. Locke's man in the State of nature was neither selfish, nor self-seeking, nor aggressive. He was social and sympathetic towards others, because the law of nature, which was the law of reason, directed him to be just. Under the law of nature, as Dunning says, "of which reason is the interpreter, equality is the fundamental fact in man's relations to one another." But equality, for Locke, was not what it was for Hobbes. In Locke's state of nature men were equal and free to act as they thought fit, "within the bounds of the law of nature." And the "bounds of the state of nature" enjoined upon them not to harm another in his life, health, liberty, or possessions. Locke's state of nature was, therefore, a state of peace, goodwill, mutual assistance and preservation, as he himself put it, in contrast to "a state of enmity, malice, violence and mutual destruction," as he described Hobbes' state of nature.

From the law of nature, as it prevailed in the state of nature, according to Locke, certain natural rights: rights to life, liberty and property. The right to liberty, he said, was man's right to do as he wanted to do so long as that was not incompatible with the rights of others.

20. "The community perpetually retains a supreme power of suspending the exercise of this power, whensoever the national legislature shal shew themselves unworthy it. In a word, whensoever the federal union of the colonies shall be so foolish or so wicked as to lay and carry on a trade against the liberties and properties of the subject." *Treatises on Government*, II, Sec. 149.



nature. The right to property was man's right to anything with which he had mixed his labour, provided he made good use of it since, as Locke said, "nothing was made by God for man to spoil or destroy." But the law of nature did not create rights alone. It imposed corresponding obligations as well, because rights had, in the words of Locke, "a law to govern which obliges everyone; and reason which is that law teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty and possessions." That is, everyone in the state of nature while valuing his own life, liberty and property must also value and respect the life, liberty and property of others as a matter of duty. Such a state of nature in which men enjoyed rights and acknowledged their duties was both moral and social.

**Need for Civil Society.** But unfortunately peace was not secure in the state of nature. It was constantly upset by the "corruption and viciousness of degenerate men." This "ill condition," Locke said, was due to three important wants which remained unsatisfied in the state of nature: (1) the want of an established, settled, known law; (2) the want of a just and indifferent judge; and (3) the want of an executing power to put just decisions. Such an "ill condition," Locke asserted, was "full of uncertainty and continual dangers" and in order to escape from all this and to obtain certainty and security men made a contract to enter into civil society or the State. This contract was of all with all and Locke named it the social contract. The social contract put an end to the state of nature and substituted it by a civil society or the State. Each individual contracted with each to give up some of the rights he possessed in the state of nature. All he agreed to was to "give up everyone his single power of punishing to be exercised by such alone as shall be appointed to it amongst them, and by such rules as the community, or those authorised by them, to that purpose shall agree on." The social contract was, accordingly, no more than a surrender of certain rights and powers so that man's remaining rights would be protected and preserved. Secondly, the contract was for limited and specific purposes, and what was given up was surrendered to the community as a whole and not to a man or to a assembly of men, as Hobbes said. In this way, Locke recognised and established the sovereignty of the people, and that the State existed for the people who formed it, they did not exist for it.

**Two Contracts.** If men were objects for which the social contract was necessitated, that is, to create positive law, establish a known judge, to create an authority to enforce just decisions, the society in its corporate capacity established the government and authorised it to make positive laws consistent with the law of nature, appoint impartial judges to settle disputes, and to enforce their decisions. There were, thus, two contracts, according to Locke, though he did not say so explicitly. The first was a social contract which brought into being the civil society or the State. The second was a governmental contract when society in its corporate capacity established a government and selected a ruler to remove the inconveniences or "ill condition" which necessitated the formation of the civil society or the State. The second contract or the governmental contract was subordinate to the first inasmuch as government was "only a temporary power" to act for certain ends and its authority was confined to those ends. It was limited, moreover, to the condition that of

it was to be used in the exercise of "established known laws." If the government failed to secure the ends for which it was created and to which it had agreed, or did not exercise its authority according to the "established known laws," the community might dismiss it and appoint another government in its place. Here Locke establishes the inherent right of the people to revolt against the authority of the monarch, if he ever abused the terms of the contract to which he is a party, and ruled arbitrarily ignoring the "established known laws" made by the representatives of the people.

(The purpose of Locke is served. By making the monarch a party to the contract, he limits his authority and subordinates it to Parliament, "the supreme power of the Commonwealth." Three conclusions flow from it: (1) that the government exists for the good of the people; (2) that it should depend on their consent; and (3) that it should be limited and constitutional in its authority. If it is not for the good of people, if it does not depend upon their consent, if it is not constitutional and exceeds the authority vested in it, the government can be legitimately overthrown. Locke, thus, justified the Revolution of 1688. and deposition of James II. and accession to the throne of England of William and Mary,

Locke recognised the existence of three powers in the civil society or the State. (There is first of all the legislative, which he called "the supreme power of the commonwealth." Legislature, he held, was the instrument through which the will of the community was expressed. Since the expression of the will preceded and determined its execution, that department of government which carried out the laws must be subordinate to the department that made them. Although, for Locke, the legislature was unquestionably the superior power, yet it was not sovereign. The idea of absolute, unlimited, and inalienable sovereign power in any human hands found no place in Locke's theory of the Social Contract. Behind the "supreme" legislature stand the people, the final embodiment of power. ("The community," said Locke, perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject."

Secondly, there was the executive which, according to Locke, included the judicial power. The legislature need not always be in session, but the executive must be. Hence, he concluded, they "come often to be separated." There should be separation between the legislature and the executive, "because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them." This is how Locke enunciates the doctrine of the Separation of Powers which is enshrined in the American Constitution, though it is Montesquieu, not Locke, who is the author of the famous classification of powers into executive, legislative and judicial.

(The third power that Locke recognised was what he called the federative—the power that made treaties. Locke has not more to tell us about federative power, except that it is much less capable to be directed by positive laws and so must necessarily be left to the prudence and wisdom of those who are entrusted to manage it for public good.

To sum up, the following important points may be noted in Locke's doctrine of the Social Contract:—

(1) Locke's state of nature was **pre-political** rather than **pre-social**.

(2) His state of nature was not that of perpetual warfare as it was with Hobbes. It was a state in which men were equal and free to act as they thought fit within the bounds of the law of nature. The law of nature was the law of reason and the law of reason established certain natural rights and recognised certain duties. This state of nature in which men had rights and acknowledged duties was moral and social in character.

(3) ( But certain inconveniences were experienced in the state of nature. These inconveniences were three in number: uncertainty in the application of the law of reason; absence of a common judge to decide disputes according to the established law; and, there was no proper authority to execute those decisions. To escape from these inconveniences and the continued danger of fights, wars and confusions accompanied thereto, men through **voluntary** compacts formed political communities and the communities, instituted governments.

(4) According to Locke there were two contracts: **social contract** and **governmental contract**. The first put an end to the state of nature and substituted for it a civil society or the State. The second was with a view to forming the government and selecting a ruler. But the second contract was subordinate to the first. Since the creation of government by a community followed the prior organisation of the community itself, the community could change the government without dissolving itself.

(5) The ruler was a party to the contract.

(6) There was not a surrender of rights as with Hobbes. It was only transference of a few given rights.

(7) Law was not the command of the sovereign as Hobbes had said. According to Locke, law must be the expression of the will of the people and it should be consistent with the law of reason.

(8) Locke made **consent** of the people the source of all governmental authority,

(9) Locke gave to the people the right to revolution and, thus, the ruler could be deprived of his authority if ever he failed to fulfil the terms of his contract.

**Evaluation of Locke's Theory.** The most distinctive contribution of Locke to political theory is his doctrine of natural rights. Life, liberty, and property, he represents, as inalienable rights of every individual. The end for which civil or **political society** is constituted is to secure these natural rights, and the attainment of these rights is made possible through the agency of the **government**. Locke, accordingly, makes a clear distinction between the **state** and **government** and introduces the theory of **consent**, which, in the words of (Professor Laski, now occupies a permanent place in English politics. According to Locke, government holds power on condition and it derives its authority from the consent of the people whom he ultimately holds sovereign. He emphasizes that



"the sovereignty of the State is not the sovereignty of a ruler." and "the will of the State may limit the will and actions of a ruler." Government, in the opinion of Locke, is a trust and the authority of government must be employed for fulfilling the needs which necessitated the formation of the civil society. If the government fails to function properly and in accordance with the wishes of the people, then, the community has the power to dissolve it and substitute another government in its place. "The happiness and the security of the individual figure, not as essential to the perpetuity of a government, but as the end for which alone government is ever called into existence."<sup>21</sup>

(The main defect in Locke's theory is that he altogether ignores the concept of legal sovereignty. In the words of Gilchrist, "To use our terminology, Hobbes gives a theory of legal sovereignty without recognising the existence and power of political sovereignty; Locke recognises the force of political sovereignty, but does not give adequate recognition to legal sovereignty."<sup>22</sup>)

### JEAN JACQUES ROUSSEAU, 1712-1778

Jean Jacques Rousseau, the great French writer of the eighteenth century, elaborated his theory in his famous work, *The Social Contract*, published in 1762. Rousseau, unlike his English predecessors, Hobbes and Locke, had no purpose to serve, and no definite cause to uphold, although his teachings inspired the French Revolution of 1789. His object was "to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain free as before." Rousseau, therefore, wanted to offer a logical explanation of the nature of civil society, though his logic is lost in the epigram and paradox in which he indulges too frequently. (This was natural, because Rousseau was a man with abnormally intense feelings and emotions, vivid imagination, and warm sympathies. He stated many of his ideas abstractly.)

**The State of Nature.** The starting point in Rousseau's theory was the "traditional" state of nature. What the state of nature actually meant to him, Rousseau himself was neither clear nor consistent about it. He had thought and talked about it "because all world was thinking and talking about it,"<sup>23</sup> and Rousseau used it practically in all the various senses that had been attached to it. But "throughout the fluctuations of his usage, one idea alone appeared unmistakable, namely, that the natural state of man was vastly preferable to the social or civil state, and must furnish the norm by which to test and correct it."<sup>24</sup> (Back to nature was his cry. He had a romantic belief in the excellence of primitive simplicity and denounced the artificiality of "so-called civilised existence." He maintained that the progress of science and arts had tended to degrade the morals of man. Return to natural simplicity, he held, was the only

21. Dunning, *op. cit.*, pp. 364-365.

22. Gilchrist, R. N., *Principles of Political Science*, p. 61.

23. Cf. Morley's *Rousseau*, Vol. I, p. 155.

24. Dunning, *op. cit.*, Vol. III, *From Rousseau to Spencer*, pp. 12-13.

cure against all corruption and degradation rampant in civil society. But it did not mean that Rousseau wanted to destroy civil society. (What he precisely meant by "return to nature" was that "nature must be the rule for men in society."<sup>25</sup> It would deliver mankind from the corrupt and artificial existence and could be accomplished only by the creation of natural social conditions.

Rousseau's man in the state of nature, was a "noble savage," who led a life of primitive simplicity and idyllic happiness. He was independent, contented, self-sufficient, healthy, fearless and "without need of his fellows or desire to harm them." It was only the primitive instinct and sympathy which united him with others. He knew neither right nor wrong and was away from all notions of virtue and vice.<sup>26</sup> It was, thus, a pure, unsophisticated, innocent life of perfect freedom and equality which Rousseau's men enjoyed in the state of nature. (They were as yet free from the spiritless influence of civilisation; they sought their own happiness untrammelled by social laws and social institutions.)

But these conditions could not last for long. (Two things emerged to corrupt this perfect scene. One was increase in **population** and the other was dawn of **reason**.) With the increase in population, economic progress moved apace. The primitive life of simplicity and idyllic happiness disappeared. Fixed homes established family, and the institution of property emerged, sounding the knell of human equality. (Man began to think in terms of **mine** and **thine**. "By nature man scarcely thinks," held Rousseau, "and, the man who reflects is a corrupt creature."<sup>27</sup> When man began to think in terms of mine and thine there emerged the institution of private property. (The first man who, after enclosing a piece of ground, bethought himself to say 'this is mine,' and found people simple enough to believe him, was the real founder of civil society.) The whole process of development may best be described in the words of Dunning: "The arts of agriculture and metallurgy were discovered; and in the application of them men had need of one another's aid. Co-operation revealed and emphasized the diversity of men's talents and prepared thus the inevitable result. The stronger man did the greater amount of work; the craftier got more of the product. Thus appeared the difference of rich and poor—the prolific source of all other sources of inequality."<sup>28</sup>

**Emergence of Civil Society.** The equality and happiness of the early state was, thus, lost. Mankind went rapidly into a state of war resembling Hobbes' state of nature. War, murder, wretchedness, and horror that had been unknown in the savage state became universal. The rich and the poor were ranged against each other in unrelenting hostility.

25. Dunning, *op. citd.*, Vol. III, p. 13.

26. Rousseau said, "Original man had not the least notion of mine and thine; no true idea of justice...no vice no virtues...unless we use these terms in the sense of qualities conducive to his own conservation."

27. If Rousseau's arguments are to be summarised, it means "intelligence is dangerous because it undermines reverence; science is destructive because it takes away faith; reason is bad because it sets prudence against moral intention. Without reverence, faith and moral intuition there is neither character nor society." Sabine, *A History of Political Theory*, p. 578.

28. Dunning, *op. citd.*, Vol. III, p. 10.

That was a disquieting state of affairs and every individual became anxious to get rid of it. The escape was found in the formation of a civil society. (Natural freedom gave place to civil freedom by a social contract) of each with all and all with each. (As a result of this contract a multitude of individuals became a collective unity—a society.) The contract placed every individual in complete dependence on others—complete though mutual and equal. (The individual, in Rousseau's political system, "puts his person and all his power in common under the supreme direction of the general will and in our corporate capacity we receive each member as an indivisible part of the whole.")

**General Will.** There was only one contract according to Rousseau, which was at once social and political. The individual surrendered himself completely and unconditionally to the will of the body of which he became a member. (The body so created was a moral and collective body and Rousseau called it the **General Will**.) The unique feature of the General Will was that it represented collective good as distinguished from the private interests of its members. (It was the will of all the citizens when they were willing not their own private but the general good; it was the voice of all for the good of all.) Rousseau went further and said that my will which willed the best interests of the State was my best will and it was, indeed, more real than my will which willed my private interests. All actions were the result of the will, but my will for the good of the State was morally superior to any other will, private or associational, which might from time to time determine my conduct. The General Will being the compound of the best wills of all citizens willing the best interests of the community and its lasting welfare, it must be sovereign. Since it was my will, my own real will, I ought always to follow it. If I did not, because some private and selfish interests prompted me not to follow it, then the General Will could legitimately compel me to obey it. Indeed, it was the only authority that could legitimately coerce me, for it was my own will coming back to me even though I did not always recognise it as such. And in following it, I was fulfilling myself and was, thus, finding true freedom. (Whoever refused to obey the General Will would be compelled to do so by the whole body. "This means nothing less than that he will be forced to be free; for this is the condition which secures him against all personal dependence.")

The General Will, though by definition it could only deal with matters of public not private interest, was alone the judge of what constituted public or private interest. The General Will, moreover, could not allow anything to stand between it and the complete loyalty of its citizens. (It was, Rousseau believed, better that other associations than the State should not exist, but if they did, they must always be subordinate, and if any conflict of loyalties should ever occur, citizens must always obey the State because it was infallible and the custodian of the real interests of all.)

The General Will must also, Rousseau said, "be inalienable and indivisible." Hence it could not be represented in parliamentary institutions. "As soon as nation appoints representatives," he said, "it is no longer free, it no longer exists." England, he declared, was only free during elections, after which it "is enslaved and counts for nothing." Nor could



the General Will be delegated in any manner whatever. Any attempt to delegate it would mean its end. "The moment there is a master, there is no longer sovereign." Here is Rousseau, the apostle of popular sovereignty.

[Rousseau made a clear distinction between the **government** and the **sovereign people**. He said that General Will could not be an executive will. The people, who were sovereign, ought not to be responsible for the details of government. Those who made the law should not carry it out, for it was the characteristic of the Sovereign General Will that it must be impersonal, and the decrees of government might frequently be particular and personal. [Rousseau meant by government only the executive power. Law-making was not a function of government but that of the Sovereign. The people entrusted their executive power to their **agent**, the government. Government was, thus, only a subordinate authority. It was the result of the decree of the Sovereign and not the creation of the contract. "There is only one contract in the State," emphasised Rousseau, "and this excludes every other".

[Two consequences follow from this. First, that the power of government can be limited, modified or taken away by the people, the master, whenever they choose so. Secondly, as government is subordinate to the Sovereign, the actual form of government is a matter of secondary importance to Rousseau. So long as General Will is Sovereign, it matters not what form of government it may be, though he was convinced that the States should be small so that, when necessary, all citizens could get together and make laws. "The larger the State the less the liberty." By "liberty" here Rousseau obviously means not freedom from political control but freedom for political control; freedom to determine the course of legislation. Such a direct democracy is the only legitimate form of government, because only in such a constitution does each man "obey himself alone and remain as free as before." Rousseau regarded representative government as a specious form of slavery.

For Rousseau, law is not the will of a class, but the will of the whole nation. [This will," he said, "is to be discovered simply by asking the nation to meet together and declare it. Only when I actively assist in legislation am I really a citizen and genuinely free; and, since the fewer the citizens are the more weight my voice has amongst them. Rousseau believed in direct government by citizens, who should themselves in public meetings make the laws; without being betrayed by elected representatives. His choice of direct democracy among the forms of government was largely based upon the Swiss cantons, which he knew, and the ancient City-States, of which he had read.

[Law is, accordingly, an expression of the General Will, which is the will of a society for the common good. It, therefore, demands my respect. But the common good is also my good; and so, finally, in obeying the law I am pursuing my own best interests and achieving what I really will. [It is to law alone that men owe justice and liberty... It is the celestial voice which dictates to each citizen the precepts of public reason, and teaches him to act according to the rules of his own judgment, and not to behave inconsistently with himself.]

Another important result of the contract is that life and liberty of each member of the community is secured and founded on the General Will of the society as a whole. Equality and liberty, Rousseau said, are ensured, because each individual makes complete surrender of himself and all his rights to the community. While doing so, he receives his person and rights back again as an indivisible part of the sovereign community. Rousseau said, "Since each gives himself up to all, he gives himself up to none; and as there is acquired over every associate the same right that is given up by himself, there is gained the equivalent of what is lost, with greater power to preserve what is left." Each individual, thus, has a dual capacity. He is both a member of the sovereign body, and a subject.<sup>29</sup> He is sovereign, as he himself is an integral unit of the community. He is subject, because he must obey the General Will and the General Will stands for public interest.

No individual can, therefore, justifiably disobey the General Will. The General Will, adds Rousseau, is infallible: it is always right and tends to the public advantage. Moreover, by obeying the General Will the individual simply obeys himself as he himself is the creator of the General Will. Nor can the individual complain of any coercion. Real coercion, Rousseau says, never occurs in society. Even a criminal wills his own punishment. "In order then that the social compact may not be an empty formula, it tacitly includes the undertaking... that whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free... This alone legitimatizes civil undertakings, which, without it, would be absurd, tyrannical, and liable to the most frightful abuses." No act of the sovereign can, thus, be coercive. And how can it be so when the General Will is the repository of the interests and welfare of all. An individual can act capriciously when he wants something different from what the interests of the community demand. He does not, then, rightly know his own good or his own desires. The General Will can only know it. Therefore Rousseau repeatedly said that the General Will is always right. It cannot be wrong, because the General Will stands for the social good, which is itself the standard of right. "What is not right is merely not the General Will." In this way, Rousseau brought emphasis throughout is that the real interest of the whole community must always be the real interest of each of us, even though it may not be our interest as we ourselves see it. This is what Rousseau means by complete surrender and he tried to prove, though not very successfully, that in making this complete surrender each of us is securing for himself the only true liberty. The State, to Rousseau, is a collective person, and "I obey it because only in so doing am I really myself, am I truly free." Freedom, in brief, is obedience to self-imposed laws. The law of the General Will is the highest law.

We now know a good deal about the General Will. It is the result of all men willing their best wills for the good of the State. It is sovereign,

29. "Each individual, contracting, so to speak, with himself, finds himself engaged under a double relation, namely, as a member of the sovereign towards the individuals, and as member of the State towards the sovereign."

inalienable, indivisible, unlimited and one which cannot err. Yet we do not know how it is to be found and Rousseau himself can never tell us how we can be sure of finding the General Will. [At times he seems to suggest that the General Will is to be sought only when all unanimously agree, though he holds that the will of All is something very different from the General Will. The "will of all," he says, "is a mere total of selfish and casually coincident wills." [At times it implies that it is the majority will, though at other places he tells us that this can only be so "if all the characteristics of the General Will are still in the majority." At times it appears that the residue left after cancelling out the differences expressed by all the citizens is to be regarded as the General Will. (Rousseau is, thus, very vague in what he tells us about the General Will. "So much vagueness about something as important as the finding of the General Will," observes Wayper, "is to be regretted. Rousseau, who has told us so much about the General Will, has still not told us enough; indeed he has left us in such a position that nobody can be sure what the General Will is on any particular point."

Rousseau compared with Hobbes and Locke. Rousseau had drawn something from Hobbes and something from Locke. In fact, he began with the methods of Locke and ended with those of Hobbes. Both Rousseau and Locke agreed that man in the state of nature was free and happy. The need for a civil society was felt with the emergence of certain disquieting affairs in the state of nature. For Locke these were the inconveniences as a result of uncertainty in the application of the law of reason, absence of a common judge to decide disputes arising therefrom, and absence of a common authority to enforce the decision. With Rousseau, increase in population and dawn of reason upon man were responsible for conflict of interests and, thus, strife in the state of nature. Formation of a civil society by means of a contract was deemed the only way out. [Both Locke and Rousseau agreed that the fundamental social compact ought to have for its end and object the better preservation of the person and goods of every individual, i.e., life, liberty, and property. Rousseau was also near Locke when he said that individuals surrendered their rights to the community, thus, making people ultimately sovereign and source of political authority. Both Locke and Rousseau made distinction between the state and government, though Rousseau maintained that the institution of government was not the result of contract. Both believed that the contract did not remove the supreme power from the people.

Rousseau's "voice is the voice of Locke, but the hands are those of Hobbes." The influence of Hobbes upon Rousseau is, indeed, marked and singular. With Rousseau, as with Hobbes, the natural man in the state of nature was absolutely independent of others. (The only difference between the two being that with Rousseau he was not at war with others, although eventually, when equality and happiness of the early state was lost, Rousseau's mankind, too, went into a state of ceaseless warfare. Again, that there was only one contract by which each individual surrendered all his rights, and the authority of the sovereign to whom rights had been surrendered were strongly reminiscent of Hobbes. /For Rousseau, it was the General Will which was sovereign; for Hobbes it was the



King. But once Rousseau established the sovereign power in the General Will, he endowed it with as much absolute, unlimited, all-embracing, inalienable and indivisible powers as Hobbes gave to his sovereign monarch. Similarly, General Will, according to Rousseau, could neither be wrong nor unjust. It could even force the individual will to its own point of view. Are these conclusions not similar to those of Hobbes? (The only difference being that in the case of Hobbes these are the attributes of a King, whereas with Rousseau they belong to the General Will and what General Will exactly is, Rousseau remained throughout vague and indefinite. In any case, both Hobbes and Rousseau made man the plaything of the sovereign, no matter who the sovereign was.)

**Evaluation of Rousseau's Theory.** Rousseau was the apostle of popular sovereignty and the secret of his political philosophy is found "in the substitution for a sovereign of the sovereign."<sup>30</sup> He justified revolutions against arbitrary rule and was the pioneer to preach the ideals of democracy. Sidgwick says that the characteristic of Rousseau's revolutionary doctrine of popular sovereignty is that it rests on three very simple principles. These are: "(1) That men are by nature free and equal; (2) that the rights of government must be based on some compact freely entered into by these equals and independent individuals; (3) that the only compact at once just to the individuals becomes an indivisible part of a body that retains an inalienable right of determining its own internal constitution and legislation—a sovereign people."<sup>31</sup> Rousseau brings into prominence the idea of consent and establishes once for all that **will**, not **force**, is the basis of the State. He also champions the cause of direct democracy by vesting the legislative power in the people. Rousseau's political teachings had a profound appeal to the fathers of the Constitutions of the United States of America and France. To quote Dunning, Rousseau's spirit and "dogmas, however disguised and transformed, are seen everywhere both in the speculative system and in the governmental organisations of the stirring era that followed his death."<sup>32</sup> Rousseau died in 1778.

But the main defect in Rousseau's philosophy is in his explanation of the General Will. He places no limit on the absolute power of the whole over its members. Rousseau, indeed, gives no option to the individual will against the General Will which can neither be wrong nor unjust. Similarly, individuals cannot protest against the authority of the General Will. Law, according to Rousseau, is the expression of the General Will. If the individual suffers from punishment, say death penalty, he is really a consenting party to his own execution as he is a party of that sovereign will which made the law under which he is condemned. Rousseau really tried to explain how government can be justified—how men can submit to it and yet remain free men and not slaves, and he thought he could do that by showing that government is a natural development inasmuch as it is only in the State that men fully realize their capacities. Here he was preaching something which is fundamentally true and important. But unfortunately Rousseau is often obscure, not

30. MacIver, R. M., *The Modern State*, p. 442.

31. Sidgwick, H., *The Development of European Polity*, p. 390.

32. Dunning, *op. citd.*, Vol. III, p. 39.

always consistent, and there is a vein of mysticism running through his doctrine. He, therefore, wrapped up the lesson he was trying to teach in a language which paved the way for totalitarianism. And totalitarianism is a hateful doctrine whether the individual is asked to make complete surrender to a mystical entity called the General Will or to a personal leader like Hitler or Mussolini.

### CRITICISM OF THE SOCIAL CONTRACT THEORY

The doctrine that the State originated in a contract was a favourite theme of political speculation during the seventeenth and eighteenth centuries. But in the nineteenth century it was subjected to searching criticism. Even before the publication of Rousseau's *Social Contract*, Hume, the English philosopher, declared that contract as the basis of relations between the governors and the governed was incompatible with the facts of history. Jeremy Bentham said, "I bid adieu to the original contract, and I left it to those to amuse themselves with the rattle who could think they need it." Bluntschli characterised it "in the highest degree dangerous, since it makes the State and its institutions the product of individual caprice." (Sir Henry Maine maintained that nothing could be "more worthless" than such an account of the origin of society and government as given by Hobbes.

As an explanation of the origin of the State the theory is now entirely discredited. Following points of criticism in this connection may be noted:—

[Historically the theory is a mere fiction. There is nothing in the whole range of history to show that the State has ever been) deliberately created as a result of voluntary agreement. Nor can we suppose that man could ever think of governing himself when he lived under conditions of extreme simplicity, ignorance and even brutality with which the state of nature is described. The fact of the matter is that man can live only if he lives in society, and that he can live in society only if he accepts certain restraints on his freedom of action. These restraints are government in the germ. Society and State are natural institutions. It is man's social need which gives them existence and they continue to exist because of this need.

*Sometimes* The example of the *Mayflower compact* of 1620 is very often *like this* cited (in support of the theory) of Social Contract. The Puritan emigrants to America, while they were still on board the ship *Mayflower*, drew up and signed a document which declared: "We...do, by these presents solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation." But this is not a correct example; nor any other similar example can be cited to hold a parallel to the formation of the State by men living in the state of nature. The Puritans emigrating to new lands were not ignorant of political institutions. They were born and had lived in the State and when they went out of it they were fully familiar with the nature of their political governance, and the rights and duties of a citizen in a politically organised society. *What the Mayflower compact really meant was* "merely the transplanting to new lands of poli-

tical institutions by men already subject to political authority." And yet the covenant they concluded did not mark the origin of a new State. They remained subjects of England even after setting up their body politic. When the United States of America came into being by virtue of a solemn compact (the Articles of Confederation), the State had been familiar to them both as an idea as well as a fact.

The theory of Social Contract is, indeed, remote from actualities and oblivious of facts. Nothing like the State of nature has ever existed and even Hobbes himself, after discussing the state of nature, admitted that "it was never generally so." The most primitive peoples that the Anthropologists have described lived under a regulative system of some sort and conformed to rigid customary modes of behaviour. It is quite unhistorical to suppose that such men would resort to a contract. The very idea of a contract belongs to a later stage of social development that the hypothesis demands. Primitive man did not possess that maturity of outlook which the making of a social contract presupposes. Moreover, the conditions of a contract also presuppose a system of law to support it.

(The advocates of the Contract theory hold **individuals** making contract for their **individual** safety and security of property. But history tells us just the other way. Early law was more communal than individual and the unit of society was **not the individual but the family**.) "The family was the unit, property was held in common. Custom formed law and each man was born into his status in society."<sup>33</sup> Society has, thus, moved from **status** to **contract** and not from **contract** to **status**, as it has been maintained by the Contractualists. Contract is not the beginning, according to Sir Henry Maine, but the end of society."<sup>34</sup> In the primitive society birth determined the position of every man; it was not a matter of choice or voluntary arrangement. "He who is born a slave, let him remain a slave; the artisan, an artisan; the priest, a priest."<sup>35</sup> This is the command of status and we cannot imagine a slave having free choice to contract. If he has a free choice to contract, then, he no longer remains a slave.

[Even if it be granted that the State is the result of contract, common-sense will tell us that there are always two parties to the contract. There cannot be a one-sided contract as was conceived by Hobbes. Moreover, every contract lapses after the death of one of the contracting parties.] It cannot be made legally binding on the descendants of the original parties to the contract. Bentham remarks, "I am bound to obey not because my great-grand-father may be regarded as having made a bargain which he did not really make with the great-grand-father of George III, but simply because rebellion does more harm than good."

It is assumed by the Contractualists that men are equal in the state of nature. But this assumption is incorrect. If status determined the position of man in the primitive society, then, the natural inference is that inequality rather than equality existed in the state of nature. Nor can we accept human nature as it has been portrayed by the exponents of

33. Gettell, R. G., *Introduction to Political Science*, p. 36.

34. Maine, Henry, *Ancient Law*, pp. 108-10.

35. Refer to Appadorai's, *The Substance of Politics*, p. 36.



the contract theory. The life of man may justly be described as a life lived in groups. And while living with others he is neither as bad as Hobbes thinks him, nor is he so good as Rousseau considers him. Both Hobbes and Rousseau have allowed their intellect to be carried away by their imagination.

The conception of natural rights and natural liberty, as is said to have existed in the state of nature, is illogical and fallacious. Liberty cannot exist in the state of nature. Law is the condition of liberty. Without restraint liberty is nothing short of licence and condition of licence is anarchy, pure and simple. The state of nature being pre-political and even pre-social, it was subject to no civil law. Rights, too, arise in a society and every right is accompanied by a corresponding obligation. If there is no society, we cannot think of rights. No rights, as such, existed before the State arose.<sup>36</sup> Finally, there can be no rights without a consciousness of common interest on the part of members of a society and common consciousness was conspicuous by its absence in the state of nature. "Without common consciousness," writes Green, "there might be certain powers on the part of individuals, but no recognition of these powers by others as powers of which they allow the exercise, nor any claim to such recognition; and without this recognition or claim to recognition there can be no right."<sup>37</sup>

Even on a rational analysis the theory of Social Contract can no longer be upheld. Relationship between the individual and the State is not a voluntary one. Each one of us must compulsorily belong to a State and the ties which bind men together are permanent. Each of us is born into the State; we are part of the State; and the State is part of us. Burke has aptly said that the State "ought not be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco or some other such low concern, to be taken up for a little temporary interest and to be dissolved by the fancy of the parties... It is to be looked on with reverence... It is a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the end of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living but between those who are dead and those who are to be born."

If the theory of Social Contract is accepted as a true origin of the State, it will make the State purely the handiwork of man, an artificial contrivance. But the State is neither the handiwork of man, nor the creation of God; nor the result of force. It is the product of growth and evolution and many factors enter in the process of its development.

Finally, the authors of the Contract Theory had no mind to trace the origin of the State. Their primary object was to establish the basis of political authority. Determined to prove certain results, they wove a web of their own and in a manner which suited their purpose.

36. Green, T. H., *Lectures on Principles of Political Obligation*, with an Introduction by A. D. Lindsay, p. 48. "Natural right, as right in a State of nature which is not a State of society, is a contradiction." *Ibid.* Also refer to p. 66.

37. *Ibid.*, p. 48

**Value of the Theory.** We reject, therefore, the doctrine that the State originated in contract. At the same time, (we cannot discount the practical value of the theory.) It has the advantage of giving us perhaps the only sound assumption on which to build and maintain any system of political relationships. It insists upon the fundamental truth that no stable State can exist without the consent of its members, that it is they, and they alone, who make the State. It further emphasises that there is no State either before or without the people and the State has no authority except that given to it by the people. The relationship of government to governed is essentially one of contract or bargain as obedience is conditional on the government fulfilling its own part and doing all that it is entitled to do by its "Charter" or "Constitution" and no more. (The principle of **consent**, thus, became an important factor in the development of political thought and consequently it eclipsed the much talked and till then widely accepted doctrine of the Divine Origin of the State. In fact, as Gilchrist points out, "the chief enemy to the Divine Theory was the Contract Theory." Both Locke and Rousseau declared in most unequivocal terms that the monarch derived his authority not from God but from the people and he could continue to remain in office only on the condition of good government. The Contract theory, therefore, "served a useful purpose in its time by combating the claims of irresponsible rulers and class privilege."

The Contract theory has also helped in the development of the modern concept of sovereignty. Hobbes paved the way for Austin, the author of legal sovereignty; Locke was the champion of political sovereignty; and Rousseau was the high priest of popular sovereignty. (Rousseau also brought into prominence the ideal of direct democracy.) Indirect or representative democracy lost much of its appeal after the end of World War I. New devices of popular participation in the work of government began to be advocated, and "the referendum is merely a modified form of Rousseau's conception of inalienable sovereignty of the people." Furthermore, the modern theory of a clear separation between the State and government has really come to us from Locke. Finally, the Contract Theory raises a common man on the pedestal of political glory. The modern cry of equal right of voting for all citizens is, in fact, the legacy of Rousseau's ideal of equal political rights.

### SUGGESTED READINGS

- |                    |   |
|--------------------|---|
| Barker, E.         | : <i>Social Contract.</i>   |
| Cole, G. D. H.     |   |
| (Introduction by)  | : <i>The Social Contract.</i>   |
| Crossman, R. H. S. | : <i>Government and the Governed</i> , Chaps. III-V.                            |
| Dunning, W. A.     | : <i>Political Theories from Rousseau to Spencer.</i><br>Chap. I.               |
| Dunning, W. A.     | : <i>Political Theories from Luther to Montesquieu</i> ,<br>Chaps. VIII, X, XI. |
| Garner, J. W.      | : <i>Political Science and Government</i> , Chap. X.                            |
| Gettel, R. G.      | : <i>Introduction to Political Science</i> , Chap. VI.                          |
| Gettel, R. G.      | : <i>History of Political Thought</i> , Chaps. XII, XV.                         |
| Greaves, H. R. G.  | : <i>The Foundations of Political Theory</i> , Chaps. I,<br>II, III.            |

Haines, C. G., and

Haines, B. N.

Hobbes, T.

Laski, H. J.

Leacock, S.

Locke, J.

Lord, A. R.

Mabbott, J. D.

MacIver, R. M.

Maine, H. S.

Rousseau, J. J.

Sabine, G. H.

Wayper, C. L.

: *Principles and Problems of Government.*

: *Leviathan*, Chaps. XIII, XIV, XVII, XVIII.

: *Political Thought in England from Locke to Bentham.*

: *Elements of Political Science*, Chaps. II, III.

: *On Civil Government, Two Treatises.*

: *Principles of Politics*, Chap. II (1921).

: *The State and the Citizen*, Chaps. II-IV

: *The Web of Government*, Chap. II.

: *The Ancient Law*, pp. 108-10.

: *The Social Contract.*

: *A History of Political Theory*, Chaps. XXIII, XXVI.

: *Political Thought*, pp. 42, 82, 130-52.



## Origin of the State (Contd.)

### PATRIARCHAL AND MATRIARCHAL THEORIES

**Probable Origin in Family.** "The question of exact political origins is unanswerable in the present state of knowledge", says Professor F. H. Hankins,<sup>1</sup> and anything that is advanced is largely, if not entirely, the work of speculation. It seems, however, safe to hazard that the State is the product of history [and the family being the most primitive of all human groups, it must have had the starting point in this primary and earliest social unit.] "In the family, the primary social unit", says MacIver, "there are always present the curbs and controls that constitute the essence of government... which is the continuation by the more inclusive society of a process of regulation that is highly developed within the family. The same necessities that create the family create also regulation... Here is the government in miniature, and already government of a quite elaborate character." It begins with marriage and inheritance, controls the simple economy, carries on the family worship, organises defence, arranges hunting and pasture, sees after the upkeep of shelter, of supplies. Thus the family is held to be the simplest and earliest link in the evolution of the State and the control exercised by a father over the members of his family is supposed to represent the origin of human government. There are, however, some political thinkers who believe that the State is simply the enlargement of the family. But all differ among themselves on the essential question whether the primary unit in the pre-historic times was the family or the tribe, and from whom descent was traced.)

**The Patriarchal Theory.** (The foremost among such theories is the Patriarchal Theory which seeks to explain that the State is the enlargement of the family. [Originally, the family consisted of a man, his wife and children.] Father was the head of the family and his control and authority was complete in all respects over all its members. When his children married there was expansion in the original family and it led to the establishment of new families. But the authority of the father and head of the original family remained unabated as before) and it was duly acknowledged by all his descendants. This constituted a patriarchal family. (In due course of time the patriarchal family expanded and developed into a clan. The members of a clan were bound to one another by ties

1. Quoted by Maxey in the introduction in his *Political Philosophies*.

*Hand from a Tribe from emerged as a*

of blood relationship and all lived and functioned under the recognised authority of the senior living male member of the original family. A clan by its own expansion grew into a tribe. With the lapse of time many members withdrew from the parent tribe and settled in new lands in search of their living. This resulted into, by virtue of the same process of development, the founding of many new tribes. The tribes united by ties of blood relationship acted together for common purposes, particularly in defending themselves against the aggression of other tribes. This involved the recognition of some common authority under whose influence they could rally round. This is how the State has developed. Leacock, while giving the process of this development, says, "First a household, then a patriarchal family, then a tribe of persons of kindred descent and finally nation—so emerges the social series erected on this basis."

Aristotle believed that the State took form as a natural expansion of the family. The society of many families, he observed, "is called a village, and a village is most naturally composed of the descendants of one family, the children and the children's children, for which reason States were originally governed by kings) as the barbarian States now are, which are composed of those who had before submitted to kingly government; (for every family is governed by the elder, as are the branches thereof, on account of their relation thereunto. . . . And when many villages so entirely join themselves together as in every respect to form but one society, that society is a State, and contains, in itself, if I may so speak, the end and perfection of government." According to Aristotle, then, the State makes its appearance as a kinship group, an outgrowth of the family; and the authority of the earlier kings is derived from the authority of the head of the family.)

*Two books* Sir Henry Maine's Patriarchal Theory. The chief exponent of the Patriarchal Theory is Sir Henry Maine, at one time the Law Member of the Governor-General's Executive Council in India. (He elaborated his theory in his *Ancient Law* (1861) and *The Early History of Institutions* (1874).) Maine went deep into history and derived his evidence) regarding "the rudiments of the social State" (from three sources—from "accounts by contemporary observers of civilisations less advanced than their own," from "the record which particular races have preserved concerning their primitive history," and from "ancient law").

Maine maintained that society in primitive times was) "in fact, and in the view of the men that composed. . . (an aggregation of families,)" *f* and not a collection of individuals. The unit was the family and the ancient law was so framed as to recognise the patriarchal or family groups as perpetual and inextinguishable entities. The eldest male parent—the eldest ascendant—was absolutely supreme in his household and his dominion extended "to life and death, and is as unqualified over his children and their houses as over his slaves." Over them, indeed, he possessed

2. Leacock, S., *Elements of Political Science*, p. 38.
3. *Politics*, pp. 1-2.
4. *Ancient Law*, p. 120.
5. *Ibid.*
6. *Ibid.*, pp. 123-24.

despotic authority. He was not only absolute owner of property, including even what his children had acquired, but he could chastise and even kill, could sell or transfer by adoption, could marry or divorce any of his children at will. (With the breaking up of the single families more families emerged, but all were held together under the authority of the head of the first family. This was the beginning of the tribe. Many members of a tribe withdrew and settled in new places.) Such withdrawals led to the growth of new tribes. (These tribes still united by kinship acted together for common purposes and ultimately formed a State. Maine, thus, outlines this process of development: "The elementary group is the family, connected by common subjection to the highest male ascendant. The aggregation of families forms the Gens or Houses. The aggregation of Houses makes the tribe. The aggregation of tribes constitutes the commonwealth."<sup>7</sup>

Following important points may be noted in Maine's theory:—

1. In the patriarchal family element of paternity was the chief fact.
2. Descent was traced only through males and from the same ancestor. None of the descendants of a female was included in the primitive notion of family relationship. Kinship was, accordingly, purely agnatic.<sup>8</sup>
3. Permanent marriage was the rule, whether monogamy or polygamy.
4. Head of the family was the basis of all authority, and his power was unqualified over his children and their houses and other relations of all descendants, howsoever numerous.
5. He controlled not only the business affairs of the group which he headed, but also its religion and its conduct.<sup>9</sup>

The family was the primal unit of political society, "the seedbed of all larger growths of government," as Woodrow Wilson calls it.<sup>10</sup> Over the family the patriarch ruled with autocratic power. By virtue of the *patria potestas*, the flocks and herds of his sons belonged to him, and his domination extended to life and death, being as unqualified over his children and their dependents as over his slaves. But with the birth of new generations, a change occurred. The family shell was broken, because there was no longer any living male ancestor, a grandfather or great-grandfather, who could claim patriarchal authority over the whole group and maintain family cohesion. The single family had developed into several families, yet all of them were fully conscious of their ultimate kinship. Bound together by ties of common blood and worship of the common ancestors, they associated in a wider common fellowship group, the gens, owing allegiance to some elected elder—perhaps the oldest living ascendant or the most capable. Similarly, the gens broadened into the tribe. The pastoral pursuits gave way to agriculture and settled life, a definite land became a matter of necessity, tribes united to form the State.

7. *Ibid.*, p. 138.

8. *Ibid.*, p. 128.

9. *Ibid.*, pp. 145-8.

10. *The State*, p. 15.



In support of his statement, Sir Henry Maine cited the Patriarchs of the Old Testament, "families" and "brotherhoods" of Athens, the *patria potestas* in Rome, and the Hindu joint-family system in India. To this may be added particularly the tribal system of the North-West Frontier of Pakistan. The Patriarchal Theory, thus, adopting the family as the unit and supposing "the headship bequeathed from one chief to another, by easy stages transforms the father into the chief or the king, and the family into a civil community." The Patriarchal theory has during recent times received the unequivocal support of Duguit, another jurist, but a French national. Duguit maintains that the father "is the natural chief, the governor of the little state of which the members of the family are the governed. The ancient city was merely a union of families in which political power belonged to the father."

**Criticism of the Theory.** In the decade that followed the publication of Sir Henry Maine's *Ancient Law*, the Patriarchal Theory was subjected to severe attacks. McLennan and others denied Maine's claim that the patriarchal family was the earliest and original unit. There was no group in the primitive past, they urged, with a male at its head. Matriarchal system, they argued, was prior to the patriarchal system and tribe rather than family was the earliest unit of society. There was no permanent institution of marriage. A woman married more than one husband and because of the uncertainty of male parentage kinship was reckoned through women, that is, from mother to daughters. The patriarchal family developed in the later phase of human civilisation.

(The early forms of social organisation, it has been maintained, were not so simple as the Patriarchal Theory tries to establish. Sir J. G. Frazer, in his classic work *The Golden Bough*, warns that "he who investigates the history of institutions should constantly bear in mind the extreme complexity of the causes which have built up the fabric of human society, and should be on his guard against a subtle danger incidental to all science—the tendency to simplify unduly the infinite variety of the phenomena by fixing our attention on a few of them to the exclusion of the rest...")

(It is, also, suggested that the Theory does not offer an adequate explanation of the origin of the State. It is, in fact, just a speculation into the beginnings of the early society, particularly the family. Gilchrist says, "The patriarchal theory is one of the simplest explanations of the origin of the State, but one of its chief weaknesses is this very simplicity...")

**The Matriarchal Theory.** McLennan, Morgan and Jenks are the notable exponents of the Matriarchal Theory. They reject outright the proposition that patriarchal family was the earliest form of society. Their thesis is that in primitive society there was no common male head. Kinship could only be traced through mother. *matriarch*, and the way of life was a horde or totem group.

The advocates of the Matriarchal Theory maintain that Patriarchal family is possible where either monogamous or polygamous institution of marriage exists. Such an institution of marriage did not exist in the beginning of society. The earliest form of marriage was *polyandry*, one wife having several husbands. Wherever such an institution of marriage is present, the usual relations of husband and wife do not exist. Instead of

a family composed of man, his wife, and children there is a large and loosely connected group called a "horde" or "pack" organised for matrimonial purposes. In such a condition of society promiscuity of sexual relations prevails and kinship is traced through females and not males. McLennan shares with Morgan "the credit of having discovered the clan, a maternally organised, hereditary and unilateral unit, unilateral because children under this system belonged to the clan of their mother, without regard to the clan of the father."<sup>11</sup> The father belonged to a clan different from his wife, owing to the existence of the custom of exogamy—the practice of marrying only outside of one's own clan or tribe. Jenks illustrated his proposition from the conditions existing among the natives of Australia and the Malaya Archipelago. He says, "It is the custom to speak of Australian and other savages as living in tribes; . . . it would really be better to call it the 'pack' for it more resembles a hunting than a social organisation. All its members are entitled to share in the proceeds of the day's chase, and, quite naturally, they camp and live together. . . . but the real social unit of the Australians is not the 'tribe' but the **totem group**. . . . The **totem group** is primarily a body of persons distinguished by the sign of some natural object, such as an animal or a tree, who may not intermarry with one another. 'Snake may not marry snake. Emu may not marry Emu.' This is the first rule of savage social organisation. . . . The other side of the rule is equally startling. 'The savage may not marry within his totem, but he must marry into another totem specially fixed for him. More than this, he not only marries into the specified totem, but he marries the whole of the women of that totem in his own generation. . . .'"

The fundamental features of this society are:—

- (1) transient marriage relationships;
- (2) kinship is traced through females;
- (3) maternal authority is an established fact; and
- (4) females only succeed to property and power.

J. J. Bachofen, a Swiss writer, who is mainly responsible for tracing the origin of the Patriarchal Theory held that in primitive society not only descent was traced through mother and property passed in the female line, but women also "played a conspicuous, in fact, dominant role in body politic."<sup>12</sup> His first stage of social evolution was one of chaos and sexual promiscuity, then followed the matriarchate, women having grown weary of lawlessness and with the help of religious superstition, having imposed their rule; but in time men found the matriarchal authority unendurable and, asserting their superior physical strength, introduced the patriarchate. Jenks contradicted Sir Henry Maine's statement that family expanded into houses and houses into a tribe. He affirmed that the process of development was just the other way. "The Matriarchal Theory, thus, 'derives the smaller from the larger group, not the larger from the smaller.'"<sup>13</sup> Following is, therefore, the process of development

11. Dunning, *op. cit.*, Vol. IV., *Recent Times*, p. 435.

12. *Ibid.*

13. Maine, H., *Early Law and Custom*, p. '220.

of matriarchal society:—

1. First there is a tribe and it is the oldest and primary social group.
2. In time a tribe breaks into clans.
3. Clans in their turn give place to households.
4. At last, comes the modern family.

It is needless to go into details of the stages in this evolution. The individual family, however, came into existence when men began to lead a pastoral life. Pastoral occupations necessitated keeping of domestic animals. Women, it came to be realized, were the best to tend sheep and cattle while men employed themselves in more arduous tasks. This led to the growth of permanent houses and permanent marriages, either monogamous or polygamous. It is in this way that family came into existence. The patriarchal family, according to the advocates of the Matriarchal Theory, emerged only when men adopted settled pastoral and agricultural habits in place of a wandering or hunting life of a primitive man.

**Criticism of the Matriarchal Theory.** That such a system of tribal relationship, as has been described by the exponents of the Matriarchal Theory, existed in the past and exists today is beyond doubt. Even Sir Henry Maine, in a later treatise, admitted the importance of a good deal of McLennan's evidence and he restated his theory in view of this evidence. Polyandry persists even today in some parts of the world including India.<sup>14</sup> But there is not adequate proof in support of the matriarchal system as the universal and necessary beginning of society. Moreover, woman is the instrument of transmission. Nature has not made her to play an active part and being physically weak she must be dominated by the sex which is physically superior to her. The Matriarchal Theory, therefore, cannot replace the Patriarchal Theory. The truth seems to be that history provides parallel examples of both the patriarchal and matriarchal systems and we can only conclude by agreeing with Dr. Leacock that "here the matriarchal relationship, and there a patriarchal regime, is found to have been the rule—either of which may perhaps be displaced by the other." Nonetheless, both the theories sufficiently establish that family is the original link in the evolution of the State.

The Patriarchal and the Matriarchal theories are in essence sociological rather than political theories seeking really to explain the beginning of human society and the process of its development. Even the point from which their authors start may not be a starting point. It is probable that centuries might have intervened between the actual begin-

14. According to information available from official sources in India, polyandry is prevalent in the districts of Kangra, Lahaul, Spiti, Kinnaur and Renuka tehsils in Sirmur district in Himachal Pradesh, in Tehri-Garhwal and Uttar Kashi districts in Uttar Pradesh. It is also practised by the Jaunsaris in Dehra Dun district, Maravas, Harijans and Dhobis in Tiruchirapalli; Oddars Bayans, Arundadiars and Uppiliars in Salem district in Madras, and by Muslims in Chandernagore, West Bengal.



ning of mankind and the most archaic society about which we are told by the advocates of the Patriarchal and Matriarchal Theories. Then, the nature of the family and the State are different; in their organization, functions and purpose. It is, therefore, not sufficient to say that the State is the enlargement of the family, though the germs of government may be found in the family discipline.

## THE HISTORICAL OR EVOLUTIONARY THEORY

We have so far discussed five theories in explanation of the origin of the State, but no single theory offers an adequate explanation. The State is, as Dr. Garner puts it, "neither the handiwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family." It is, in fact, an institution of natural growth which originated in the bare needs of the life of man and continues in existence for the sake of good life. The theory which explains, and is now accepted as the true origin of the State, is the Historical or the Evolutionary theory. It explains that the State is the product of growth, a slow and steady evolution extending over a long period of time and ultimately shaping itself into the complex structure of a modern State. Burgess has aptly said that the State is a "continuous development of human society out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organisation of mankind."

It is difficult to say how and when the State came into existence. Like all other social institutions, it must have emerged imperceptibly supported by various influences and conditions. Apart from those influences of physical environment and geographical conditions, there are five important factors which made men to aggregate at different places and separated one group from another thereby paving the way for the rise and growth of the State. These important factors are:

1. Kinship;
2. Religion;
3. Property and defence;
4. Force;
5. Political consciousness.

It must, however, be remembered that not anyone of these influences has worked in isolation of the other in the process of State building. They operated in various combinations each playing its part in creating that unity and organisation that the State requires.

**1. Kinship.** The earliest form of social organisation was based upon blood relationship and kinship was the first and the strongest bond of unity. What bound people together and made them cohere into a group was the belief in common descent, and the earliest and closest unit of kinship was the family. It is, of course, a disputed point whether tribe, group or family came first, yet it cannot be denied that family constitutes the first link in the process of the evolution of the State, and government must have begun in clearly defined family disci-

pline, command and obedience. Even the advocates of the Matriarchal Theory ultimately veer round the family and recognise the authority of the patriarch.

With the expansion of the family arose new families and the multiplication of families led to the formation of clans and tribes. Throughout the process of this evolution sanction of kinship was the only factor which bound the people together. Persons unconnected by ties of blood, unless admitted into the tribe by adoption, were deemed strangers and treated as enemies. The name of the common ancestor was the symbol of kinship. The "magic of names," as MacIver sums up, "reinforced the sense of kinship, as the course of generations enlarged the group. The blood bond of sonship changed imperceptibly into the social bond of the wider brotherhood. The authority of the father passed into the power of the chief. Once more under the aegis of kinship new forms arose which transcended it. Kinship created society and society at length created the State." The origin of the political activity of the man is, therefore, embedded in Aristotle's cogent remark that man is a social and political animal.

It is, then, clear that germs of government must have begun in clearly defined family discipline and the patriarch evoked respect for obedience to authority. The authority of the father of the family over its members was complete and absolute. The patriarch, who afterwards became the tribal chieftain, combined unto himself the religious, administrative, judicial and military powers. This is the evidence of history.

2. **Religion.** Closely connected with kinship, as a factor in State-building, is religion. Kinship and religion in the primitive society were two aspects of the same thing and both acted simultaneously in welding together families and tribes. "Religion was the sign and seal of common blood, the expression of its oneness, its sanctity, its obligation." When the bonds of kinship steadily weakened with the expansion of the family into the gens, the clans and the tribes, common form of worship reinforced the sense of unity and respect for authority.

Primitive religion evolved from animism to ancestor-worship. The early man was surrounded by natural phenomena which he could not understand. He looked towards natural forces, such as storms, thunder and lightning, clouds and wind, the sun, moon and stars with awe and reverence. The changing seasons and the birth and death of vegetation made him agnostic. To his innocent mind and uncultivated intellect the mystery of death and other psychological problems, like sleep, dreams and insanity, were insoluble. He interpreted all such phenomena as manifestations of some supernatural power. What he could not understand, he began to worship. He "saw God in clouds and heard him in the wind." Under such conditions emerged two forms of religion, worship of nature, and worship of ancestors. The hallowed ceremonies of ancestor worship were conducted at the family altar. There the living came into the presence of their great dead, the spirit of the departed, who exercised power to evil as well as to good and who must therefore

be appeased by the meticulous performance of sacred rites. In this way came to be established a family of deities around which abundant traditions and myths came to be formed.

Ancestor-worship, thus, strengthened the bonds of family union which eventually contributed to the solidarity of the tribe. But these bonds were only local in character. When tribes expanded by incorporation or conquest, kinship and ancestor-worship proved weak ties of union among the diverse people spread over extended territory. Common belief in gods and deities, or worship of nature became the cementing bond of affinity and comradeship among such people, although remnants of the old family worship and legends of tribal heroes, still formed a common national religion that served as a sanction of government and law. The sanction of law in primitive society was religion and, "as it was the terrible aspect of religion that appealed to primitive minds, the breaking of law was followed by terrible punishment." This is how the relation of command and obedience, which was natural in family relations, was definitely established by religion.

Side by side grew up superstitions and magical customs. In primitive communities magical rites and incantations were practised both privately and publicly. Any one who could propitiate the spirits began to acquire commanding importance and unique influence. He was looked upon with awe and reverence and all bowed to his authority since none could dare incur the wrath of the magic-man. The sorcerer became the leader and it is here that we witness the emergence of the magician-kings. From magician the step to chief or king was simple. Magicians gave way to priests when people had lost faith in the spirits and the power of magic. The priests, too, came to eminence in the same way as the magicians. The evidence available sufficiently shows that early kings were priest-kings, combining the duties of ceremonial observances and secular rule. The rise of the magician and of his kingly successor has been the special thesis of Sir James G. Frazer. According to Frazer's theory, the first form of tribal government was the gerontocracy or (council of old men, representing the various families constituting the tribe. Their control over the tribe was perfect and complete as they alone were deemed to be familiar with the secret mysteries of the tribal religion, and they alone were considered eminently competent to know all that could be known about the spiritual world. Out of the Council of elders emerged the magician, "a resolute and ambitious man, a clever and unscrupulous man, who pretended to extraordinary powers of divination and sorcery. The fertility of the soil, rain or drought, the success or failure of crops seemed to depend more upon his incantations and rituals, than upon human effort. His influence, especially among an agricultural people, assumed enormous proportions. The magician eventually made himself priest-king."

To sum up, the value of religion in the evolution of the State can hardly be denied. In primitive society religion and politics were inextricably mixed up. Religion not only helped the unification of political communities, but it was religion alone which was responsible for subordinating barbaric anarchy and for teaching reverence and obedience. The importance of religion, as a force in the evolution of the State, was



not limited to the earliest States alone. In Afghanistan religion has, even now, much to do with politics. Islamic law is a force behind Pakistan and she was avowedly a theocracy when her now abrogated Constitution declared Pakistan an Islamic Republic. Even now Pakistan remains an Islamic State. Twenty-three Muslim theologists of Pakistan jointly pronounced a verdict (*fatwa*) against the election of a woman as the President or Khilifa of an Islamic State,<sup>16</sup> when Miss Fatima Jinnah<sup>17</sup> declared her intention to oppose President Ayub Khan in the Presidential election. Although a secular State, yet in India, too, religion still plays an important part in the political life of the country. India's political life is demarcated more on religion than on political issues. Legacy of religion in the political life of the country is found even in England. Religious coronation of Kings or Queens and "the still-half-consciously lingering view of law and of State commands as something sacred." The tradition of the divine origin of political power dies hard.

**Property and Defence.** In order to understand the origin of the State and government we must observe how the kinship group earned its living. "The basic factor in any given society," says Professor Laski,<sup>18</sup> "is the way it earns its living; all social relations are built upon provision for those primary material appetites without satisfying which life cannot endure. And an analysis of society will always reveal the close connection between its institutions and culture and the method of satisfying material appetites. As these methods change, so also will the institutions and culture of the society change.... Changes in the methods of economic production appear to be the most vital factor in the making of changes in all other social patterns we know. For changes in those methods determine the changes of social relationships; and these, in their turn, are subtly interwoven with all the cultural habits of men." The key to social behaviour must, therefore, be sought in the economic system.

→ Among primitive peoples there were successive economic stages that marked the growing importance of property and that brought about corresponding changes in social organisation. The three economic stages are the huntsman stage, the herdsman or pastoral stage and the husbandman or agricultural stage. They are universal stages in the sense that groups generally passed from the one to the other, from lower to higher.

The huntsman led a miserable existence moving about in quest of game and of wild berries or roots. He had no property except the crude weapons and tools. It was a condition of primeval savagery and escape came through the domestication of wild animals. The domestic animals, originally kept as pets, proved a good way to provide against future periods of scarcity. Still later, it became apparent that the animals were useful for other purposes besides supplying meat in times of privation. The horse provided rapid means of movement, the cow provided milk and the sheep wool. He had also come to know that his flocks and herds could also be vastly increased by systematic breeding. A hunts-

16. *The Statesman*, New Delhi, Sept. 30, 1964.

17. Sister of Mr. M. A. Jinnah, the architect of Pakistan.

18. Laski, H. J., *The State in Theory and Practice*, p. 91.

property and  
defence: state  
in order to live, man must eat and to eat he must carry on some  
activity. The activities by which man secures food and shelter and  
subsequently come to possess wealth and property. Carried over from page 108

man became a herdsman and flocks and herds became his wealth. Simultaneously, other forms of property, for example, improved clothing, weapons, and domestic utensils, appeared.

Whatever may have been the earlier form of the family, pastoral life, which is marked with substantial property interests, increased the social dominance of the male.<sup>19</sup> It strengthened, if it did not create, the patriarchy. The patriarch exercised absolute control over the family, and over all its property. When the family expanded into the gens and the tribe, the patriarchal discipline prepared the way for tribal government. Property introduced all sorts of complications. There must reside sufficient power with the tribal authorities to settle property disputes between different families, and to regulate and safeguard the rights of ownership. Thus, the gradual increase of property entailed a corresponding intensification of social control. Tribesmen, who were accustomed to giving unquestioning obedience to their respective family heads, accepted the authority of the Council of elders and of the chieftain who rose out of the Council.

At the same time, the military organised force was needed to repel the plundering raids of the adjacent tribes. Concerted action for common defence against hostile designs of others strengthened the solidarity of the tribe and increased the authority of the tribal organisation. The saying "war begat the king" is, according to Gettell, "at least a half truth, since military activity was a powerful force, both in creating the need for authority and law, and in replacing family organisations by systems purely political." The conditions called for individual leadership. Some member of the Council of elders or patriarchs, whose personal qualities, such as military prowess, knowledge of human nature, oratorical capacity, with or without the assistance of religious superstition, pushed his way to the front and raised himself far above his peers in prestige and influence. Tribesmen rallied round him and he was recognised as chieftain. Since the qualities of leadership were likely to be inherited, the office of the chieftain became attached to a particular family and was transmitted like other forms of property. Generally, it passed on to the eldest member of the family, though in times of unusual stress, when war or domestic violence threatened, the office went not to the eldest, but to the most competent of the chiefly lineage.

The institution of private property and its systematic development, thus, brought the nomadic herdsman to the threshold of the State. The State must possess the element of territoriality. Although the pastoral tribes confined their wanderings within roughly determined geographical limits they were still nomads. The State came into existence when the people became permanently territorially settled.

The territorial State did not appear until population began to press upon subsistence. The herdsman needed much more land than husbandman. As the pastoral tribe grew in numbers and flocks and herds multiplied, one of the two courses was imminent to follow: either new land

19. Refer to MacIver's *The Modern State*, p. 31. According to him, the relatively settled pastoral life "accorded with, and in a sense, made necessary, the patriarchal family." He believes, as do others, that the matrilineal family preceded patrilineal. Property brought about the change.

might be acquired by migration or the old land put to more productive use. Fertile pastures when brought under cultivation could support a bigger population, and the tribesmen had long been experimenting agriculture, with as crude methods as their tools. Rather than leave the region to which they had become attached, they supplemented their prevailing pastoral economy with the rudiments of agriculture. Gradually, the herdsman became husbandman. The transition took place slowly, as, "by trial and error or by the imitation of some neighbouring agriculturists, the methods of tillage are improved and their potentialities realised." When a pastoral kinship group settled on the land, the State began. The group had already set up a government; it acquired territoriality as well. The essential elements of the State are: people, government and territory.

Along with the new system of production, that is, agriculture, came great social changes. The first was, sharpening of class distinctions with the unequal distribution of wealth. The rise of social classes occurred in pastoral society and they were perpetuated in the agricultural society. Besides nobles and commoners, there were slaves. When one tribe attacked the other, the captives were no longer killed and perhaps eaten. The pastoralist had plenty to eat, but felt the need of supplementing the labour sources of the family to care for the expanding herd and to protect it from beasts of prey and human marauders. He invented slavery as a substitute for cannibalism.<sup>20</sup> It was a beneficent invention and in the agricultural society systematic resort was made to slavery, *played a great role*

4. Force. The new system also placed a great emphasis upon military life, first for defence, then for conquest. It is often contended that the State began in conquest when the herdsmen conquered the husbandmen or peasants. The conquest theory is favourably received by the Sociologists. Oppenheimer, the most prominent advocate of this theory, maintains that "the cause of the genesis of all States is the contact between peasants and herdsmen, between labourers and robbers, between bottom lands and prairies."<sup>21</sup> (The conquest theory does not explain the origin of the State. But the part played by warfare in moulding political institutions at any stage of human development cannot be discounted, more so in a primitive society. Private property, in the form of flocks and herds, afforded a strong incentive to looting, which in turn had to be checked by systematic defence and punitive expeditions against the hostile tribes. Concerted action for common defence and chastisement of the warring tribes created the dire need for military leadership which was, of course, an important factor in creating the chieftainship and strengthening its powers. The office of the chieftain became hereditary and consequently it led to the establishment of the monarchy. Yet, the emergence of the State, as Prof. MacIver says, and he is supported by the weight of evidence, "is not due to the force, although in the process of expansion force undoubtedly played a part.")

5. Political Consciousness. The last is political consciousness arising

20. Oppenheimer, F., *The State*, p. 37.

21. *Ibid.*, p. 45.

22. *The Modern State*, p. 222. Similarly, Sir John Seeley considers conquest as the means, not of originating the State, but of producing a new and abnormal type of State, which he calls "inorganic"—*Introductory to Political Science*, pp. 73-75.



ing from the fundamental needs of life for protection and order. When the people settle down on a definite territory in pursuit of their subsistence and desire to ensure it from the encroachments of others, the need for regulating things and persons is felt imminent and this is the essence of political consciousness. It is doubtful whether there was ever a conscious expression for such a need. But there is no denying the fact, that the institution of private property and the requirements of self-defence, both from within and without the tribe, and consequently the emergence of military leadership was probably the first distinctive political authority to which the people ungrudgingly submitted. This military leader commanded the confidence of his people and he established some sort of political organisation, i.e., government, to meet the needs of protection and order. In some such way the State arose. People, territory, government and independence from others or sovereignty, as we describe it now, had come about.

Much of this, which we present as a regular process, was, of course, very slow and confused. The course of events must have also varied with the character and circumstances of each people. All the same, the spirit of organisation, as Woodrow Wilson says, "is natural twin born with man and the family." In its simple and rudimentary form germs of governmental organisation were found in the family discipline. Religion reinforced family discipline and gradually created wider discipline necessary for the existence of the State. Custom was the first law and there was a religious sanction behind every custom and the magicians who controlled religious sanctions were powerful than any agent of political authority. When human wants, economic, social and political, increased by the combination of diverse circumstances and conditions, the State, territorially established and forming a distinct group of people independent of others, became more complex in form, "more universal in its range of activities, more indispensable to the needs of mankind." The distinction we now make so carefully between the State and society is of comparatively recent origin. In fact, a double process had been at work through all these centuries: one by which the State takes over powers hitherto enjoyed by society, and the other by which it abandons to society powers it no longer needs.

### SUGGESTED READINGS

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|-------------------|--|
| Barker, E.        | : <i>The Study of Political Science and its Relations to the Cognate Sciences.</i> |
| Frazer, J. W.     | : <i>The Golden Bough.</i>   |
| Garner, J. W.     | : <i>Introduction to Political Science</i> , Chap. IV.                             |
| Gettell, R. G.    | : <i>Introduction to Political Science</i> , Chap. VI.                             |
| Gilchrist, R. N.  | : <i>Principles of Political Science</i> , Chaps. III, IV                          |
| Jenks, E.         | : <i>A Short History of Politics.</i>  |
| Leacock, S.       | : <i>Elements of Political Science</i> , Chaps. II, III.                           |
| MacIver, R. M.    | : <i>The Web of Government</i> , Chap. II  |
| MacIver, R. M.    | : <i>Society: Its Structure and Changes.</i>                                       |
| Maine, H. S.      | : <i>Ancient Law</i> , Chap. V.  |
| Maine, H. S.      | : <i>Early History of Institutions.</i>  |
| Oppenheimer, F.   | : <i>The State.</i>  |
| Sealey, J. R.     | : <i>Introduction to Political Science</i> , Lecture III.                          |
| Stagwick, H.      | : <i>Development of European Polity</i> , Lecture III.                             |
| Soltan, R. H.     | : <i>An Introduction to Politics.</i>  |
| Willoughby, W. W. | : <i>The Nature of the State</i> , Chaps. III-VI.                                  |
| Wilson, W.        | : <i>The State</i> , Chap. I.  |

## The Evolution of the State

**Evolution of the State.** We discussed, in the last two Chapters, theories regarding the origin of the State and remarked that no single theory offers an adequate explanation. (The State is neither the result of an artificial creation nor can it be said to have originated at a particular period of time. It is, on the other hand, the product of growth, a slow and steady evolution extending over a long period of time) embracing many elements in its development, prominent among which are kinship, religion, property and need for self-defence from within and without. The starting point, however, is the family and germs of governmental organisation are found in the family discipline. The transition from the family to the State must have been long and chequered. The first distinctively political unit was the tribe. In the days of nomadic habit the organisation of the tribe was sufficient to satisfy its needs. But when their travelling days were over, a settled life necessitated new needs of organisation. Once the population was territorially integrated with fixed abodes, their common interests developed and the original kinship tie gave way to new territorial tie. The original kinship, in fact, never disappeared. What actually occurred was a fusion of the two principles, kinship and common interests emerging out of the life of togetherness on a common land in the shape of territorial kinship.

(But the process of the evolution of the State has not been uniform. Natural, environmental and temperamental differences of the people spread over different areas of the universe presented different conditions under which the State emerged at different times and places. As a result of these differences very different types of States with various forms and patterns have co-existed and co-exist even now. It is instructive to mark the following stages through which the State has evolved.

① **The Oriental Empire.** Roaming tribes generally settled down in regions where nature was bountiful and responsive to the needs of man. The (early nomadic tribes in search of pasture lands made the fertile valley of the Ganges, the Nile, the Euphrates, the Tigris, the Yellow River, and the Yang Tse their homelands) and as a result of conquest and enslavement of the weaker tribes established the earliest States known to history. It was in these valleys that civilisation took its birth and kingdoms and empires flourished. These States were manned (by hereditary monarchs who combined in themselves political and religious power. Law was what religion sanctioned and the king permitted. The subjects knew

*These states the people of which were loosely united, were ruled by +*

nothing about their rights and liberty. They were only recipient of orders and respectful submission to orders was their first and last duty. Gettell aptly says that the Oriental States, "represented to their peoples only the slave driver and the tax collector."

The earliest States were essentially power and property States, built on wealth and military force. They attracted the jealousy of the nomadic tribes beyond or of each other, and had little stability; the conqueror being conquered in his turn. Sometimes, the breakup came from within by the revolt of some subordinate official, who either made his province into an independent State or actually overthrew and replaced his sovereign lord. "Expansion by annexation, then disruption and reconstitution, either from within or by conquest from the outside," remarks Professor Soltau, "were the normal processes that marked those early empires."

It must not, of course, be assumed that those States were primitive and barbarous. Most people know about the scientific knowledge of the Babylonians and Egyptians, their division of time, their mathematical calculations. The code of Hammurabi regulated every aspect of life and revealed the existence of a highly organised, prosperous society, with a carefully worked out hierarchy of functions. The Sumerians are said to have established the systems of rotation of office, annual appointments and election by secret ballot. The Aryans were familiar with the institutions of constitutional monarchy, bicameralism, the office of the speaker and various other devices necessary for a representative form of government.

**Greek City-State.** The next type of State development was the Greek City-State. In fact, the study of Political Science may be said to begin with the Greek City-States. The Greek City-States were the first communities to have given conscious thought to "politics". Although the Greek political institutions were probably not unique, yet they represented the most fully developed instance of a way of life and government of which records have come to us.

When the Greeks settled in Europe, they were divided into local communities organised on the primitive model according to clans and tribes. Each clan and tribe occupied distinct valleys and islands into which Greece was broken up by sea and hills. These valleys and islands, by the lapse of time, became centres of political life sharply different from the Oriental Empires. From the history of the Greek City-States, and especially from the history of Athens, we can trace how the tribal administration gradually gave place to the local principle in government, and how the local community was developed into the City—a new political type of governance. The Greek City was a true State in the modern sense of the term in which the political, economic, intellectual, and moral life of the people was focussed on the central city.

With the Greek City-State two ideas were integral. Each City was a politically organised State independent of others and proud of its independence. The Greeks never thought, and perhaps it was foreign to their nature, to merge their identity in any other City and to make a large unit of political administration. Secondly, the Greek City-State was deliberate-



ly limited in size and population. According to Greek political philosophy, the concentration of political, social and intellectual life at one central city was possible only when the State was small. Aristotle put definite limitations on the population and size of the State. He held that neither ten nor a hundred thousand could make a good State, because both these numbers were extremes. He laid down the general principle that the number should be neither too large nor too small. It should be large enough to be self-sufficing and small enough to be well governed.

The Greek City-State developed to the stage of a conscious effort directed to the realisation of liberty and equal laws. It was a great experiment not only in the art of self-government, but also in quest of virtue. To be a citizen of the State did not merely imply, in the Greek view, the payment of taxes and the casting of a vote. It implied a direct and active co-operation in all the functions of civil and military life. A citizen was normally a soldier, a judge and a member of the governing assembly; and all his public duties he performed not by a deputy but in person; the gods of the city were his gods, its festivals he must attend. The State was, thus, identified with society. The Greek City was at once a State, church and school (and it embraced the whole life of man). Since the object of the State was to secure a good life for all citizens, all forms of State control calculated to secure that end were considered proper and justified, and no line was drawn between matters political, moral, religious or economic. Burke's description of the State as "a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection" was the real life of the Greek City-State, and Athens at the height of her fame may be regarded as the embodiment of all that was most advanced in Greek political ideas.

The City-States of Greece were the typical examples of direct democracy in the modern sense of the term. (All citizens were directly associated with the governance of the State and it really meant the power of the people. But forms of government, according to Greek philosophers, were subject to cyclic changes. Monarchy was the first and in time it gave way to aristocracy. Aristocracy was succeeded by oligarchy. Then, came polity and, finally, democracy.) Democracy was held to be rule by the mob, an intolerable confusion which was succeeded, again, by monarchy and, thus, ran the course of cyclical political changes. *Handwritten note: again revolution started.*

The Greek City-States fundamentally differed from the Oriental Empires. But there were snags, too, in the Greek political life. Their love of independence verging on separatism ultimately resulted in their collapse when a powerful State arose in the north under Philip of Macedon. They were also wanting in what may be called, the submissive virtues—patience, self-denial, and the spirit of compromise and tolerance. Their self-will and lack of disciplined life embittered the faction fight in their Cities between rich and poor, nobles and commons, friends of Athens and friends of Sparta. The works of the Greek historians and political thinkers clearly show that the Greek society of their time was not in a sound state. The philosophers were constantly returning to the question, what was virtue, and how it might be taught. And they looked on this question as one of immediate and even urgent importance to society. They felt that their countrymen were thinking too much of liberty, and far too little of dis-

cipline. And they foresaw that a people in this state of mind must fall before that power whose people were better disciplined than the Greeks. The Macedonians, and after them the Romans, proved the truth of this forecast.

The Greeks were also wanting in humanity. They made liberty the exclusive right of superior people and denied to others what they valued for themselves the most. Even the wisest of the Greeks regarded slavery as a natural institution and they never dreamed that civilised life was possible without slavery. Athens, for example, had only about 20,000 citizens who obtained leisure for their public duties by turning over all the rough work to a much larger body of slaves. Slavery is incompatible with civilisation and, as such, with democracy. A democratic society is one in which all enjoy equal rights and privileges without any barriers of class distinction. The brotherhood of man is its basis and all its members stand equal in the common fraternity. This means faith in man as a man and his personality.

The Greek City-State was an all-inclusive partnership in every aspect of human existence. But this broad inclusiveness made the Greeks neglect one of the most essential of political problems, that of clearly defining the functions of the State and separating it from various other associations which compose the society. "The failure to distinguish the State from the community," says MacIver, "left Athenian liberty itself a monument broken and defaced. The all-inclusive State, whether its dimensions are those of the city or nation, cannot draw the line between law and custom, between enforcement and spontaneity, between the conditions of order and those of culture. So long as the theory is accepted that the State is omniscient, there will be confusion and suppression... Under such a theory no form of life is safe, no religion, no opinion, unless its adherents control the government. So the very diversity which enriches a civilisation when recognised as existing of right, creates under the principle of the 'universal partnership' those violent and factious oppositions which on the contrary destroy it."

**The Roman Empire.** Rome was originally just one of the numerous little States which had been born in Italy, in much the same way and for the same geographical reasons as in Greece. But eventually, the Italian City-States were united with Rome at the head. As there were fewer geographical barriers in Italy than in Greece, unification was more easily attained.

(There are three definite periods which mark the growth of the Roman State. First, there was the monarchic City-State. The royal period lasted from the foundation of Rome (about 753 B.C. to 510 B.C.). At the head of the State was the king who was at once the hereditary and patriarchal chief of the people, the chief priest of the community, and the elected ruler of the State.) On the death of the King, the sovereignty of the State reverted to the Council of Elders. The Elders appointed a temporary King for five days who, in his turn, nominated another Elder. This Elder actually named the new king subject to the approval of the assembled people. "The vote of the people was ratified by the approval of the gods, as given in the ceremony of inauguration." (The powers of the King were) described as "imperium" which were technically unlimited.

both in times of peace and war. But there were two customary limitations to these powers. (First) the King was expected to consult the Council of Elders and to follow their advice. Secondly, all cases involving capital punishment were submitted to the people for their final decision.)

During the monarchical period only the nobility, called the patricians, had a share in political authority. The landless, propertyless common people, known as the plebians, had no share in the governance of the country and they enjoyed no political rights. But later on they acquired some privileges.

(Monarchy in Rome came to end in 510 B.C. in the same way as when the Greeks expelled their "tyrants". It was substituted by a Republic. Civil and military powers were vested in two officers called the Consuls, elected annually. But it did not mean equal political rights for all citizens. The plebians were subject to political, economic and social disabilities. They could not hold any public office. The patricians had entire control of the administration of law. The public land and pastures were allotted only to them. The plebians were also legally prohibited from marrying among the patricians. The former struggled for the removal of their disabilities and they eventually succeeded in getting all the three disabilities removed one by one. The constitution of the Republican Rome rested on four principles: divided authority; a short tenure of office for magistrates; the people were the final authority on all important matters; and the military authority of all magistrates was limited. (But by the middle of the second century) these principles were very often violated and the (Republic came to disrepute). Division of authority disappeared and despotism began to reign. By this time, Rome had extended her dominions over vast and distant lands. The Republic gave way to an Empire) and the form of government adapted to a City-State was found incongruous with the administrative needs of an Imperial Empire.

(The Roman Empire at one stage extended over England, France, Germany, Spain, Austria, the Balkans, Greece, Asia Minor and whole of the Mediterranean coast and its hinterland. The governors sent to rule the distant parts of the Empire enjoyed wide discretionary powers and were practically independent of the Home Government.) The only check on their authority was the possibility of impeachment at home on retirement. But it was just a nominal check.

In Rome itself a despotism of the extreme type was established. The Emperor became all-powerful and his word was law. The popular assemblies ceased to function and the old political maxim that the ruler received his power from the people gave place to the Divine Origin Theory. The authority of the Emperor was interpreted to have divinely originated and for a time he was worshipped as God. When Christianity was accepted as a State religion, the Divine Origin Theory was explained to mean that the Emperor was the deputy of God on earth and unflinching obedience to his authority was obedience to God. In this way, the Republican Roman City-State became the centralised autocratic world-empire thereby shifting the emphasis from the Greek ideals of liberty, democracy, and local independence to the Romans' ideals of unity, order, universal law, and cosmopolitanism.



The World Roman Empire at the height of its political glory made some very important contributions to the political institutions. The Romans were not a brilliant people. They did but little work in art and philosophy, but they possessed in full measure the practical qualities in which the Greeks were deficient. They were patient, methodical, skilful in arranging compromises and in devising legal forms. The Greeks pursued their ideal of "liberty and equal laws" disregarding authority and discipline. *(The Romans held fast to authority, in the family and in the State. At the same time, they were ready to concede rights to all kinds of subject persons by extending them the right of full Roman citizenship.)* While they were reducing one country after another to subjection and order, they were also developing their law on rational principles. The Romans studied the institutions and customs of the heterogeneous people over whom their authority extended and found a common element of equity and convenience for all. This Law of Nations, as they called it, was a great step forward which widened the notions of lawyers and statesmen. *(They also applied the Greek notion of the law of Nature to their legal system.)*

But the Roman Empire could not endure long. Among the causes which led to her decline and downfall "were the sacrifice of individual liberty for the sake of securing unity, the soulless efficiency which characterised her administration, the moral depravity of the upper classes, devastating pestilence, the unsound economic basis of the empire, failure to make rules for the succession of emperors, religious disintegration, and the invasion of barbarian hordes." In a word, the weakness of the Roman Imperial system was that "it remained too Roman, too centralised, too much dominated by the desires and interests of Rome, too dependent on the personality of the emperor of the day." Though Rome fell, yet she gave to the world the first well-organised and well-governed State. It also contributed importantly to many systems of law and its influence may be seen in the development of international law and world organization like the United Nations. Colonial administration is another contribution of the Roman Empire.

**The Feudal State.** It was on the ruins of the Roman Empire that the so-called feudal type of society came to be established. The tottering imperial rule gave rise to the growth of new principalities headed by the landed aristocracy. There was another factor which gave fillip to this tendency. The Teutonic barbarians who overran the Roman Empire were wedded to the ideals of individualism, liberty and local self-government. The Roman ideals of administration, on the other hand, were concentration of authority, uniformity of law, and a centralised administration. Feudalism was an admixture of the two opposite forces.

Feudalism is the name given to the form of society and government which prevailed in Europe from 476-1500 A.D. According to the feudal theory, the Kings were the vassals of the Emperor who, in his turn, was the vassal of God. They received their dominions as fiefs to be held on condition of loyalty to their lord. Each King, then, divided his dominions into sufficiently large parts and granted each part to a noble called the tenant-in-chief, on the condition of loyalty and service to the King. He continued to hold the land so long as he fulfilled his obligations. After

his death the rights and duties of vassalage passed on to the heirs of the lord. The tenants-in-chief divided their respective lands into smaller units and gave to their vassals on similar conditions. This process of division and transference continued to many stages. At all stages the vassal owed his lord fidelity which was promised by him at the ceremony of homage: "The vassal came before his lord, bare-headed and unarmed, and declared on his knees that he became his 'man'. The lord, then, kissed him and raised him from his knees. Then the vassals swore fidelity (fealty) to his lord."

The essential characteristics of feudalism may be summarised as:

(1) the grant of land by a lord to a vassal who held it so long as he fulfilled his obligations of loyalty and service;

(2) the existence of close and personal ties between the lord and the vassal; and

(3) the lord of an estate exercised the full or partial rights of sovereignty, over all inhabitants living therein.

The estate of the lord, big or small, was called a fief or feud, and, as such, the term feudalism.

The obligations of the vassal to his lord were military service normally limited to forty days in a year; payment of rent to the lord for his land and house; work at the lord's fields for a certain number of days in a year; payment to be made on occasions like knighting of the lord's eldest son, the marriage of his daughter, the ransoming of his person if the lord was made a prisoner of war; relief or payment made when a new heir succeeded to the fief; payment of fines when the vassal alienated the land to another party; lodging and hospitality to the lord and his followers on his journeys or hunting expeditions; and attendance at the lord's court.

The duties of the lord were to protect his vassal and to avenge his wrongs; to defend his rights; and to secure him justice in all matters.

But the feudal State was not a State in the real sense of the term. There was neither common citizenship nor common law. There was no central authority in the State and the loyalty of the people was divided at every step. The individual owed his allegiance to his immediate landlord and only through him to the King. The feudal system, in short, "was confusion rough organised." Out of this confusion emerged the superior authority of the Church resulting into a deep and continuous conflict between the Spiritual and Temporal authorities. Absence of central authority, division of the loyalty of the people at every step, their religious infatuation, and the inconceivably vast property under the possession of the Church made it possible for the Pope to claim his superiority over all the Princes. The Church had, in fact, taken over some functions which legitimately belonged to the State. A separate system of law and courts developed for the clergy. Figgis has aptly observed, "In the Middle Ages the Church was not a State. it was the State; the State or rather the civil authority... was merely the police department of the Church."

**The Nation-State.** Feudalism was only "a temporary scaffolding or framework of order." It gave to the people of Europe some order, but a

true national life could not grow on such a system. (Many factors contributed to its decline) The general course of events had been that powerful lords subdued less powerful ones, and small kingdoms emerged by successful conquest or lucky marriage, and by the consolidation of an authority that was generally welcomed by the masses, if not by the more important lords whose powers were gradually limited by the new monarchs. The Renaissance and the Reformation accelerated the pace of this change. The Tudors in England took advantage of the situation and demonstrated to the European countries how the people could unite and progress under a strong and centralised authority. The ties of unity were further fostered by the sentiments of nationality. Britain's insular position helped the British in attaining the full stature of organised and conscious nationhood. The attempt of the English, in the early fifteenth century, to dominate France roused the national spirit in that country too. A similar awakening, due to various causes, had come in Spain and Portugal. The sixteenth century saw the Danish and Swedish peoples also similarly organised.

*Established and* A new type of State, thus, emerged. The old concept of the State was replaced by the State (based on bonds of nationality strengthened by natural boundaries.) A national State, with a distinct and separate territory of its own, gave rise to the modern theories of sovereignty and equality of States.) The nation-State also helped the growth of international law.

(The nation-States began their careers as absolute monarchies) When Papal authority was set aside, and feudal rights were giving way, it was natural for the people to cling to the central institution in which their political life was embodied. The growing national consciousness of the people had made them realise the need for consolidation. But consolidation demanded concentration of authority. Protestantism, too, while limiting the authority to a territorial State, placed the spiritual and civil authority in the hands of the king. The political thought of this period, also supported absolutism. Machiavelli freed the ruler even from the limitations imposed by public morality. Hobbes championed the cause of absolute monarchy by bringing forward the theory of Social Contract. Then, followed the theory of Divine Right of the kings, the theory deliberately developed to support the royal absolutism.

(But the absolute authority of the kings could not remain unchallenged for long. The next stage in the development of the nation-State was the conflict between the king and the people. The people demanded their rights and privileges. They began to realise that power was ultimately theirs if they wished to wield it. (This was the rise of democracy and the aspirations for a representative system of government. Democracy brought with it three main principles: equality, popular sovereignty, and nationality.) The manifestation of the first principle was found in the Declaration of the Rights of Man drawn up by the French Revolutionaries in 1789. Ever since 1789, this principle "has been at work emancipating and elevating the hitherto unfree and downtrodden orders of society, and removing civil, religious and race disabilities from disqualified classes in the State." The Declaration of the Rights of Man also embraced the concept of popular sovereignty. It means, in simple words, that the people are the source of all authority, and law is the expression of their will. Finally,



the principle of nationality requires that the people, who feel they are one, are free to choose their own form of government and to manage their affairs in their own way. Here, it may be stated, again, that the French Revolution was primarily responsible for the revival of the national sentiments.

The advance of democracy wrecked absolutism and brought with it a great improvement in the political customs of the civilised nations. The selfishness of the ruling families was checked and methods of government became milder and fairer. Laws were made with due consideration of the interests of the people, and opinions were freely brought to the test of discussion. Another characteristic of the democratic State had been the pursuit of the policy of *laissez faire* in the field of industry, trade and commerce. This policy of "to let people alone" had certain obvious results. First, there had been a great expansion in enterprise and invention. Secondly, there had been a movement of diffusion owing to economic freedom. Finally, there had been a marked tendency to concentration both of capital and land.

The modern State is a nation-State) and it) has become the basic pattern throughout the world, and new nation-States arise in various parts of the world from time to time. The nation-state (places emphasis on ethnic, if possible, and geographic unity) It adopts all means at its disposal to preserve the integrity of its natural frontiers and tries to maintain a homogeneous and united people. This had been the course of the development of the State during the past five centuries.

**Colonial Empires.** Despite the emergence of democratic States in Europe and their emphasis on ethnic unity and on natural boundaries, there had been a marked tendency towards the development of overseas empires. It is estimated that about half of the population of the world spread over more than half of the surface of the earth had been under the suzerainty of the imperial powers either as colonies, or protectorates, or spheres of influence. Imperialism may be described as the most impressive achievement and the most momentous world problem of our age. Competition for these colonial lands had been one of the potent factors for the conflicts and wars among States, which characterised the first half of the twentieth century.

Subjection of dependent peoples to the great powers is incompatible with the theory of democracy and of self-determination of peoples. Subject peoples dispossessed of their political privileges and authority and subjected to economic disabilities made insistent demands for their self-determination and independence. Within the last decade and a half the British Empire has become a "Commonwealth of Nations". Most of the rich Dutch Colonial Empire was lost when Indonesia became independent and a Republic. The events in Africa especially have proved to be the last phase in the history of the Colonial Empires.

**Future of the State.** The process of the evolution of the State is not yet complete. With the liquidation of the Colonial Empires, the former narrow ideas of nationalism are also breaking down and are now being replaced by the idea of internationalism. Developments in the means of communication and transport, expansion of international trade and establishment of various international organisations have further given a stimulus

to the movement for internationalism. One may even say that if our fathers thought nationally, we think internationally. Suggestions have also been made for a world-State on the basis of a world federation. The late Professor Laski was a devoted champion of World Federation. He said that the nation-State was not the final unit of social organisation and the pressure of world forces had already made the sovereignty of the State obsolete for any creative purpose. In his recent book, *Union Now*, C. A. Streit visualises a federal union of the various democratic nation-States. Like Laski, Streit, too, outlines the scheme and method of a world government of the federal type.

Federation may be the solution of the present world politics. It is a device which satisfies the claims of nationalities. As a form of government, it is likely to solve the difficulties of both nationalism and internationalism. But a World federal union is an impossible ideal unless the States change their political and economic attitudes and the tottering imperial powers voluntarily relinquish their imperial authority. The Anarchists and the Communists, too, shall have to change their attitude towards the State as both aim to establish a stateless society. The future of the State, under the circumstances, is difficult to predict and time alone will reveal the shape of things to come.

**Evolution in State activity.** We have travelled far from the oriental despotic empires to the democratic modern State. We have also ventured to speculate on the future of the State and concluded that the process of evolution is not yet complete. But the change in the forms and patterns of States has not been confined to outward forms, or to the principles on which they are based. It is no less marked in the functions the State performs, and the nature of its problems. If we just glance through the work of the government of any modern State, we find that majority of the items in its programme, for example, the education and protection of children, guarantees for workers in industry, cultural activities, elaborate national economic policies, would have been inconceivable to be within the province of medieval governments. The new concept of the Welfare State and the mechanism of planning demolish the old theories and narrow the fine distinction made between the State and society. The functions of the State now embrace the entire life of the nation and inevitably demand from its members greater rectitude and sacrifice for future prosperity and happiness. The modern State, therefore, depends far more on the sense of individual responsibility of all its members. We, of course, take for granted the neutrality of the State in matters of religion and expression of opinion.

### SUGGESTED READINGS

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|----------------|--|
| Derley, J. A.  | : <i>The Development of the State</i> , Chap. II.                |
| Fowler, W. W.  | : <i>The City-State of the Greeks and Romans</i> , Chaps. IV-VI. |
| Gettell, R. G. | : <i>Introduction to Political Science</i> , Chap. VI.           |
| Jenks, E.      | : <i>History of Politics</i> , Chaps. VIII-XII.                  |
| MacIver, R. M. | : <i>The Modern State</i> , Chaps. I-IV.                         |
| Marx, M.       | : <i>Foreign Governments</i> , Chaps. XXXIII, XXXIV.             |
| Sidgwick, H.   | : <i>The Development of European Polity</i> .                    |
| Soltan, R. H.  | : <i>An Introduction to Politics</i> , Chap. IV.                 |
| Streit, C. A.  | : <i>Union Now</i> .   |

## Sovereignty of the State

We have said that what differentiates membership of the State from that of other associations is its compulsory nature and the fact that all other organizations and activities within the frontiers of the State are, in the last resort, subordinate to it. The State issues directions and it also enforces them; if necessary by employing armed force. "The modern State," says Laski, "is a territorial society, divided into Government and subjects, claiming within its allotted physical area, supremacy over all other institutions;" (Sovereignty is, therefore, the most important constituent element of the State. As a matter of fact, we cannot think of the State without sovereign power. "The basis of State sovereignty," to quote Laski again, "is the contingent power to use the armed forces of the State to compel obedience to its will". But sovereignty is such an elusive concept, and so much confusing nonsense has been written about it that if we could eliminate the term from our discussion, it would make thinking in Political Theory clearer. This unfortunately is too much to hope for and the State is the sovereign power in the nation.

There are two aspects of sovereignty: internal sovereignty and external sovereignty. Internal sovereignty refers to the presence in every independent State of some person, assembly or group which has the final legal power to command and enforce obedience to its authority. This supreme authority is absolute over all individuals or associations of individuals within the State. It issues orders to all men and all associations within that area but it receives orders from none of them.<sup>1</sup> Its will is absolute and it is subject to no legal limitation. "What it proposes is right by the mere announcement of intention."<sup>2</sup>

By external sovereignty we mean that the State is subject to no other authority and consequently is independent of any compulsion or interference on the part of other States. If its authority is subject to the provisions of any treaty, or if it is limited by the rules of international law, the sovereign status of the State is not destroyed in any way. These are auto-limitations and are obeyed at the will of the State. There is no other authority which can coerce it to obedience. Each State is, thus, independent of other States. Its will is its own, unaffected by the will of any external power.

1. Laski, H. J., *A Grammar of Politics*, p. 44.

2. *Ibid.*



It follows that the sovereignty of the State is unlimited internally as well as externally. It is original and absolute power and it cannot be divided. Division of sovereignty means destruction of sovereignty. Sovereignty, accordingly, represents the unity of the State, and the sovereign State is one which is externally free and internally supreme. The authority exercised by various organs of the State, i.e., government, is delegated. Gettell has aptly said: "If sovereignty is not absolute, no State exists; if sovereignty is divided, more than one State exists. There can be no legal power at the back of the sovereignty of the State and no legal check on its scope."

**Definitions of Sovereignty.** / Definitions of sovereignty, like definitions of the State, are many and varied. Bodin defined it as the "supreme power over citizens and subjects, unrestrained by laws." Hugo Grotius defined it as "the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden." Duguit says that sovereignty is the "commanding power of the State; it is the will of the nation organised in the State; it is the right to give unconditional orders to all individuals in the territory of the State." Burgess characterised it as "original, absolute, unlimited power over the individual subject and over all associations of subjects." He further says that sovereignty is "the underived and independent power to command and compel obedience." The sovereign is "legally supreme over any individual or group," says Laski, he possesses "supreme coercive power." Sovereignty, according to Jenks, is "an authority which, in the last resort, controls absolutely and beyond appeal the actions of every individual member of the community."

## TERM SOVEREIGNTY AND ITS DEVELOPMENT

**Origin of the Term.** The term sovereignty is derived from the Latin word "superanus" which means supreme. The notion of sovereignty as suggesting the supreme power in a territory is modern and its emergence is connected with the rise of the modern nation-State. But it does not mean that the ancient and medieval ages had no idea of such a notion. For the ancients it simply meant "statement of the fact that there must be an ultimate control, someone with the last word in any case of dispute, able to make final adjustments in the sharing of responsibility and power; and that the State, and no other social force, must exercise this final authority." Creon says in Sophocles's tragedy *Antigone*, "whatever the State appoints must be obeyed in everything, both small and great, just and unjust." Plato and Aristotle recognised the presence of the "supreme power" in the State and emphasised the respect for State authority; the finality of law. The Roman lawyers and the medieval writers spoke of "fulness of the power of the State."

The Middle Ages knew nothing about the doctrine and practice of concerted final authority. The political form, then, was feudalism, based on personal dependence and allegiance within small groups. Feudalism was, indeed, the antithesis of unified authority. There was open conflict between the Spiritual and Temporal authority and if any body, under the

circumstances, could claim final authority, it was the Church. Moreover, peoples' firm belief in the laws of nature or God and the sanctity which was attached to such laws over man-made laws retarded the growth of the modern idea of sovereignty. Summing up the nature of sovereignty in the Middle Ages, Ward says, "The authority of Feudalism and the belief in the law of God or nature superior to the human law made impossible the modern idea of the unlimited and indivisible sovereignty of the State over all citizens."

The religious wars of the sixteenth century destroyed the unity of the Church and on the ruins of this destruction was built the modern State. The triumphant monarch gradually either destroyed or absorbed all possible rival intermediaries between himself and his subjects, including the Church. Sovereignty came to be regarded as one of the essential attributes of the State, incarnate in the king, the head of the State. His authority was final to define and pronounce the law. The emergence of the modern State, thus, gave a new meaning to the term sovereignty. "The struggle which gave rise to the conception of sovereignty was undertaken and sustained by the monarch himself in order to establish his personal independence." To the victor belonged the spoils of war.

**Bodin and Hobbes.** The new reality of the sovereignty of the State was given its philosophical justification by a Frenchman, Jean Bodin, and an Englishman, Thomas Hobbes, each writing during the full agony of the civil and religious wars of his country, the former at the beginning and the latter in the middle of the seventeenth century. Both Bodin and Hobbes defended the need for one single unified authority, which should be accepted by all and against which no group or individual could raise the objection of any earlier rights to independence or resistance. Rights were what the State granted, compatible with the unity of the State and keeping of peace and order within it. There could be only one power within the community, they urged, which could not be limited, or divided and shared. Bodin's sovereign was, however, subject to four limitations. Firstly, as the King did not possess supermundane sovereignty, God was above him. Secondly, the supreme power of the King over his subjects was "subordinated" to "the law of God and nature," that is, to the requirements of the moral order. Thirdly, the French King could not modify the succession or any part of public domain, and, finally, the King could not touch private property. But these limitations, Bodin maintained, did not limit the power of the King over the body politic. His assertion that the Prince was the image of God meant that he was a sovereign living person and his authority transcended the whole political community just as God transcended the cosmos. He said either sovereignty meant nothing, or it meant supreme power ruling the entire body politic. He, thus, defined sovereignty as "a power supreme over citizens and subjects, itself not bound by the laws." It gave orders and received orders from none.

In this way, the concept of sovereignty took definite form at the moment when absolute monarchy was beginning its appearance in Europe. With Thomas Hobbes it reached its perfection when the sovereign power of the King was held to be natural and inalienable. His whole idea was to establish that the King possessed a natural and inalienable right to rule his subjects. Once the people had agreed upon the fundamental law

of the kingdom, and given the King and his descendants power over them, they were deprived of any right to govern themselves, and the full natural right to rule the body politic resided in the person of the King whose authority was absolute and indivisible.

**Sovereignty and the Modern Democratic State.** Later, people began to realise that the King was a part of the governmental machine and, accordingly, an agent rather than a master, and, as such, he possessed subordinate and delegated authority, which could be revoked at the will of the master, the people. It was a protest against absolute monarchy. It began with John Locke an English political philosopher, who justified the Glorious Revolution (1688), and found its fullest expression in the French Revolution. The French Revolution made the people sovereign, "and not only transferred to it," as Soltau remarks, "all the attributes of the old monarchy of divine right but removed all limitations, on the ground that the people, when governing itself, had no need to restrict its authority." The State, in its corporate capacity, was, thus, endowed with all the attributes of sovereignty which the monarch previously possessed. Two factors reinforced the absolutism of new democratic State. One was nationalism which added the claims of the nation to those of the sovereign people. The national State claimed not only unlimited authority at home over its members, but also the right to expand abroad at the expense of others. The second factor was the enormous increase in the province of the State following the Industrial Revolution. The activities of the State were not only limited to protection, administration and dispensation of justice, but it became "an organiser of economic life, an educator, an agent in practically every aspect of the collective existence." This meant an ever-increasing "mass of legislation and a great increase in the importance of the State as supreme law-maker, thus reinforcing the dogma of sovereignty, by giving it a much wider field of application."

**Rousseau.** The concept of popular sovereignty and the identification of the people with the State was actually the result of the teachings of Rousseau, which he had preached thirty years before the French Revolution. Rousseau made popular sovereignty as the doctrine of individual freedom, but the myth of the General Will, which was "always right," made of it a vindication of much more comprehensive State power than any previous political thinker had offered since Plato. Rousseau, in fact, injected into nascent modern democracies a notion of sovereignty which was destructive of democracy and pointed towards the totalitarian State. People and the State having become one, the personality of the individual becomes merged in the social whole, for it is only the power of the State which makes the freedom of its members. Rousseau asserted that the will of the State is the will of the individual in so far as he has accepted this identification of himself with the community. His real self, his real will becomes part of the common or the General Will for the common good. If he does not agree what the General Will consents for him, he pursues selfish ends and the General Will can compel him to agree and by doing so he is forced to be free. Thus, the mystical operations of the General Will create conditions of unheard of absolutism. Rousseau's State was the Leviathan of Hobbes, crowned with the General Will instead of the crown of absolute monarchs who were described tyrants.



**Hegel.** The theory of sovereignty as initiated by Rousseau was given its complete and coherent form by Hegel, the German political thinker, who made it more definitely philosophical and metaphysical. "The State," he said, "is 'perfected rationality,' the eternal and necessary essence of spirit, the rational in itself and for itself, an absolute fixed end in itself." In this way, Hegel completely identifies the State with society and asserted that only in and through the State does the individual receive what makes life worth living, without it he is nothing. Consequently the rights of the State are unlimited, legally as a matter of fact and morally as a matter of right, and the individual lives in order to make his contribution to the common life of the State. He must be prepared to enjoy and sacrifice what the good of the common life of the State either grants him or demands from him. The State being not the agent of society, it does not exist for the performance of some specific purposes and with clearly defined functions. The State, for Hegel, is the supreme community and organised moral life is only possible within the State. It is the source of morality and of all civilised existence.

**Austin and the Pluralists.** The legal theory of sovereignty received its logical analysis at the hands of John Austin, an English jurist. Austin's conclusions formed the basis of prevailing systems of jurisprudence and they exercised immense influence on political thought in England and the United States of America. Till recently, sovereignty, as such, has been viewed as absolute internal sovereignty and complete external independence. The Pluralists, the recent school of thought, reject outright the concept of the absolute authority of the State and plead for division of sovereignty between the State and various other associations present within its territorial limits. They regard the State as an association like various other associations with a specific purpose to perform. The functions of the State are well-defined and it has no rightful claim to eminence. The Pluralists, in brief, maintain that sovereignty is divisible and the State is not supreme and unlimited in its authority.

### KINDS OF SOVEREIGNTY

**Present-day confusion.** It will, thus, be evident that the whole subject of sovereignty is a hopeless confusion of a number of different issues and view-points. This is essentially due to the confusion, in the past as well as in our times, between what is and what some people would like the State to be. Extreme idealistic sovereignty is German in origin and tends to justify the State absolutism which had been the traditional policy of Prussia and its author, Hegel, who was a Prussian. This theory found its echoes later in the totalitarianism of the Nazis and the Fascists. Then, some of the thinkers were exploring the abstract nature of sovereignty and have, as Bryce remarks, been engaged in barren discussions dragging us through "a dusty desert of words rather than of substance." Others have frequently done so, as MacIver says, with an ulterior motive "to get a speculative basis for a practical propaganda."

(There is a second confusion between legal theory and political practice. The legal theory of sovereignty vests ultimate legal power in some definite person or body of persons. The authority of the sovereign is supreme and it possesses the power to enforce obedience to its will. But where that

ultimate authority is to be found? There is not one single answer to this question. Not only does it vary from country to country, but it will not be always the same in the same country. In Britain, Parliament is sovereign and what it enacts is law. An Act of Parliament cannot be called into question in any court of law. Nor can it be declared invalid, for no law exists in Britain higher than that made by Parliament. But a recent Act of Parliament takes a precedence over a less recent and supersedes any earlier statutory provisions inconsistent with it. In the United States, Congress is not sovereign. It is a delegated agency and its acts can be pronounced unconstitutional by the Supreme Court. It is the Constitution which is supreme there and the sovereign power is exercised by the constitution-amending authority. In a totalitarian State sovereignty will belong to the executive, since both legislative and judicial powers are subservient to it. Hitler retained the Reichstag as a subservient organ whose function was merely to record formal approval of Nazi policy. And no Court in Germany could question the legality of the policy endorsed by the Reichstag.

The legal sovereign, in all democracies, must ultimately bow to the political sovereign. But what is this political sovereignty and where is such a sovereign? The problem of the real location of political sovereignty has not yet been solved. Finally, there is the confusion between the actual authority and its source. "It is one thing to say," writes Soltau, "that all authority comes from the people and another to say that the people actually govern." This they obviously cannot do; government is the action of the few. And when Rousseau said that the people actually govern, he introduced in their governance that mystic element of General Will which made it possible for his disciples to justify the omniscient and omnipotent State where sovereignty rests in the hands of a small number of men who make up the government. Because of these confusions and the unreality of the elaborate justification of the omniscient and omnipotent State, Laski and others have suggested that the theory of sovereignty should be kept out of political discussions. But dropping of the theory itself does not simplify matters. It is impossible to drop it, because it exists and since it exists we cannot avoid controversy. Indeed, one of the most effective means of getting to know the character of any system of government is to find out where sovereignty can actually be located and how it is really exercised. To know it, is to know the different forms in which sovereignty is expressed.

**Titular Sovereignty.** Since the term sovereignty is used in different contexts, titular sovereignty is one of them. The origin to titular sovereignty goes back to the seventeenth century, immediately after the emergence of the nation-States. The nation-States were headed by absolute monarchies and the kings personified the sovereignty of the State. There was soon a conflict between the kings and their people. The people challenged the absolute and unlimited authority of the kings and demanded their own rights and privileges. They claimed that power was ultimately theirs and the kings exercised limited authority delegated to them on their behalf. The kings, on their own part, found refuge in the Divine Origin Theory and Divine Right of Kings and claimed divine privileges freeing themselves from all human limitations. The people ultimately triumphed and democracy with its representative institutions came to be established in one

form or other. (The powers of the king were limited and defined by law. He was retained in his position as head of the State, but in all matters of administration he was compelled to seek the advice and consent of the representatives of the people. The representatives guided him in choosing and dismissing his ministers, in raising his revenues, and in almost every act of his government.) This was the advent of constitutional government. The king remained only a symbol of authority, a legacy of the past. He personified the sovereignty of the State and in terms of law all authority belonged to him. But actual sovereignty rested somewhere else and the monarch simply exercised personal influence in the exercise of that authority. Influence is not authority.

|By titular sovereignty, thus, we mean sovereignty by the title only. It is another way of saying sovereignty in name or nominal sovereignty. It refers to the sovereign powers of the king or monarch who has ceased to exercise any real authority. In theory, he may still possess all the sovereign powers which were once enjoyed by him, but in actual practice there is some other man or body of men who act on behalf of the sovereign and exercise supreme authority. The best example of titular sovereignty is the British King who is even today "our sovereign lord the king." Legally, the powers of the king are supreme. He is the source of all authority, the acts of the government are his acts, and the officers of the State—civil and military—are his servants appointed and dismissed at his pleasure. He is also the fountain of justice and law. But in real practice all this is not true. The sovereignty of the King is now a legacy of the past. There is no action of government which is the result of his initiative. The actual power and direction of government rests with the King's duly constituted ministers. Lowell has beautifully summed up the whole position. He says, "According to the early theory of the constitution the ministers were the counsellors of the king. It was for them to advise and for him to decide. Now the parts are almost reversed. The king is consulted, but the ministers decide." The king has now ceased to exercise any real authority; it is titular.

An absolute monarch, on the other hand, is all powerful. He is a real sovereign, the source of all commands and the final authority in all business of the State. But such a sovereign is difficult to find today. Even King Zahir Shah of Afghanistan cannot claim to be a real sovereign. At the same time, he is neither titular. He has discretion and exercises some form of personal authority. The position of the Shah of Iran is more or less identical to that of the King of Afghanistan.

**Legal Sovereignty.** (The sovereignty of the State may further be looked at from two points of view: legal and political. Legal sovereignty is the conception of sovereignty in terms of law and it refers to that person or body of persons who by law have the power to issue final commands. In every State there must be some authority which is determinate and visible in the sense that it should command all and the people may appeal to it as the final authority. Such an authority is known as the legal sovereign and the authority of the legal sovereign is supreme and final over all individuals and associations. No individual or group of individuals has the legal right to act contrary to the decisions of the sovereign power, even if such decisions override the prescriptions of divine law, the



principles of morality, and the mandates of public opinion.' The courts recognise and apply only that law which emanates from the legal sovereign and disobedience to such a law is accompanied by punishment.

{The authority of the legal sovereign is absolute and its will is illimitable, indivisible, and inalienable. Law is simply the will of the sovereign. There is no one to question its validity. Within the sphere of law, there is, as Hobbes bluntly said, no such thing as an unjust command. The authority of the sovereign being unlimited, he has the legal right to will whatever he may happen to desire. All rights enjoyed by citizens are granted and enforced by the legal sovereign and there can be no rights against him. This implies that if the legal sovereign can grant rights, he can take them back or even annul them. In Britain, King-in-Parliament is the legal sovereign.} In the United States the legal sovereign consists of the combination of authorities that have the power to amend the Constitution—conventions or two-thirds majority in each House of Congress which may propose amendments, and State Legislatures or State Conventions which may ratify them.

This analysis is the lawyer's view of sovereignty. A lawyer is not concerned with the content of law. He is only concerned with the legal source from which it emanates. According to Ritchie, "The legal sovereign is the lawyer's sovereign qua lawyer, the sovereign beyond which lawyers and courts refuse to look." But behind the legal sovereign there is another power which is unknown to law. {It is the political sovereign, unorganised and incapable of expressing the will of the State in the form of legal command, but to whom the legal sovereign must ultimately bow.

The following characteristics of legal sovereignty may be noted:

- (1) The legal sovereign is always definite and determinate.
- (2) Legal sovereignty may reside either in the person of a monarch, as in an absolute monarchy, or it may be vested in a body of persons as in a democracy; King or Queen and Parliament in Britain.
- (3) It is definitely organised, precise and known to law.
- (4) It alone has the power to declare in legal terms the will of the State.
- (5) Disobedience to the imperatives of the legal sovereign means physical punishment.
- (6) All rights emanate from the legal sovereign and it can take them back or even annul them.
- (7) The authority of the legal sovereign is absolute, illimitable and supreme. It is subject to no control within and without the State.

**Political Sovereignty.** But the absolute and unlimited authority of the legal sovereign does not exist anywhere. Not even a despot can act independently and exclusively. His will is actually shaped by the many and varied influences which are unknown to law. All these influences are the real power behind the legal sovereign. {As Dicey puts it, "Behind the sovereign which the lawyer recognises, there is another sovereign to whom

the legal sovereign must bow." This is called the political sovereign, and, according to Professor Gilchrist, the political sovereign is the sum total of the influences in a State which lie behind the law.

As the political sovereign is not known to law, it is unorganised, indeterminate, and not even precise. In modern representative democracies the political sovereign is very often identified with either the whole mass of the people, or with the electorate or with the public opinion. (But the political sovereign is neither the electorate nor is it identical with the whole mass of the people, nor can it be identified with the public opinion. Taking first the electorate, no one can doubt its political power in a representative system of government. The legislature dare not disregard the will of the electorate. It may even command the legislature to do its bidding. If it does not, the members of the legislature may be punished at the next election for failure to obey the will of the electorate. Every few years the electorate creates a new representative chamber and in doing so it largely determines the nature of parliamentary commands.) But on closer examination it will be found that the electorate have no independent opinion of their own. They are influenced by party politics and while casting their votes they vote for the party rather than for the candidate. The decision of the electorate is further influenced by the vehicles of publicity—the press, the pulpit, and the propaganda—at the disposal of every political party. Thus, so many influences affect the decisions of the electorate in their voting that it becomes difficult to say where sovereignty really lies.

In certain States and at certain times we may find that the electoral sovereign does not exist. It does not exist in monarchies where the king succeeds to the throne by hereditary right. Did the electoral sovereign exist in Mussolini's Italy and Hitler's Germany? Does it exist in Russia? In Italy and Germany the *de facto* sovereign controlled both the legal sovereign and the electoral sovereign and the position is precisely the same in today's Russia as well. Similarly, there exists no electoral sovereign in Pakistan now; not even the Basic Democracies.

(Nor can we take political sovereignty as synonymous with the mass of the people. All the people do not enjoy the right to vote. Those who do not enjoy this right can neither participate in the election of their representatives nor have they any constitutional means at their disposal to effectively influence the decisions of the legal sovereign.) It is also possible that the masses may be under the influence of either the priestly class or landed aristocracy, or the militarists. It is, therefore, not the mass of the people which constitute the political sovereign. Political sovereignty really rests in that class of people under whose influence they actually are. Similar-

5. Dicey, A. V., *The Law of the Constitution* (1915), Introduction, pp. xviii-xix.

6. Gilchrist, R. N., *Principles of Political Science*, p. 93.

7. Sidgwick takes certain hypothetical cases and tries to illustrate the nature of political sovereignty. "Suppose that a monarch habitually obeys a priest, not for fear of extra-mundane penalties threatened by the latter, but from fear of finding it difficult to obtain obedience from his subjects if they believe him to be a special object of God's anger—we shall agree that he no longer completely possesses supreme political power. And if the influence of

ly, political sovereignty cannot be equated with public opinion. Public opinion is of a highly fluctuating nature and it is susceptible to varied influences.

Then, public opinion must have two characteristics. It should be, in the first place, an opinion of a public nature, and secondly, it should be as widely held by the public as possible. But one cannot always be sure that the opinion actually held is of a public nature. Perhaps the demagogue might have made the decision for them. Finally, the legislature in a representative form of government is regarded as the barometer of public opinion. If public opinion is taken to be identical with the political sovereign, it is just to identify the legal with the political sovereign.

Political sovereignty, thus, proves to be vague and indeterminate. At many stages it becomes confusing and "the more one searches for this final authority the more it seems to elude one's grasp." Yet, we cannot ignore its existence. Even Dicey, the nineteenth century constitutional lawyer, could not ignore it. He made the distinction between legal and political sovereignty. In Britain, he said, while Parliament was from a legal point of view the sovereign legislative power in the State, but it was, from a political point of view, subject to two practical limitations. It could not enforce its will if the governed refused to obey and, since it was itself made up of individuals whose outlook was formed by the same social climate as that of their constituents, there were things that it would not, in practice, dream of trying to do, howsoever extensive its legal competence might be. "If a legislature decided that all blue-eyed babies should be murdered," said Leslie Stephen, "the preservation of blue-eyed babies would be illegal, but legislators must go mad before they could pass such a law and subjects be idiotic before they could submit to it." We may, thus, define political sovereignty to be the electorate plus all other influences in the State which mould and shape public opinion. According to Professor Ritchie, the problem of good government is largely the problem of the proper relation between the legal and ultimate sovereign.

**Relation between Legal and Political Sovereignty.** In a system of direct democracy legal and political sovereigns practically coincide, because the people are directly concerned in making laws. Their expressed will is not a mere opinion, but law itself. They also elect and remove their rulers. In an indirect democracy representatives of the people make laws. They constitute the legal sovereign and the people who elect their representatives may roughly be called the political sovereign. Law ought to conform to the wishes of the electorate and the legislature must obey

(Continued from previous page)

the priesthood over the monarch's subjects were so strong that the bulk of them unquestionably obey a direction of the chief priest to cease obeying the monarch, and if, therefore, the chief priest's directions were habitually obeyed by the monarch,—it would hardly be denied that the priest had become really, if not nominally, the political superior of the monarch...."—*The Elements of Politics*, pp. 627-28. Leacock sums up: "Following upon this line of argument we might well expect to find that the legal and political sovereign would but rarely coincide. In one State the priesthood, in another the military or landed classes, in another the personal entourage of the king or the predominant influence of the metropolis, might supply the real motive power that controls the public administration."—*Elements of Political Science*, p. 60.

8. Leacock, S., *Elements of Political Science*, p. 60.

9. Leslie Stephen, *Science of Ethics*, p. 143.



their mandate. If it does not, the electorate and the legislature are not in harmony with one another and disharmony between the two tends to create political friction. Really, legal and political sovereign are not two separate things. They are two aspects of the sovereignty of the State, though expressed through different channels. When there is friction between the two, it is highly detrimental to good government. Law must be the manifestation of the will of the people and if the legal sovereign cannot accept the verdict of the political sovereign, the representatives of the people should be re-elected and the legislature reorganised and reconstituted so as to become the mirror of their opinion. Laski has rightly said that "individual is, ultimately, the supreme arbiter of his behaviour" and if the State is to be a moral entity, it must be built upon the organised acquiescence of the members."<sup>10</sup> The last word remains with the ultimate sovereign, the electorate. Indeed in some democratic States there often seems to be, says Laski, "a larger degree of obedience from the sovereign Parliament to its constituents than there is the other way round; a series of by-elections, for instance, produce with amazing rapidity a change in the will and temper of the sovereign".

The legal sovereign, therefore, cannot act against the will of the political sovereign. If it does, a legal truth may become a political untruth. A legislature which legislates in a manner contrary to the will of the people will be replaced by one more faithful to the popular will. "In other words, the political sovereign lies behind and conditions and, thus, limits the legal sovereign, though, legally speaking, the legal sovereign is omnipotent".<sup>11</sup> The distinction between the legal and political aspects is necessary and useful in that it reminds us that we are dealing with the power, not of an inanimate machine, but of human beings over their fellow-men. We know from History that, however absolute the legal right to exercise power may be, there is a limit in practice. Human beings will stand just so much.

**Popular Sovereignty.** The doctrine of popular sovereignty is the product of the sixteenth and seventeenth centuries. It emerged as an expression of resentment of the people against the despotic authority of the kings and their reliance on the theory of Divine Rights. Popular sovereignty attributes ultimate sovereignty to the people. Rousseau was its high priest and it became a slogan of the French Revolution. It was approved by Jefferson in the American Declaration of Independence and the authors of the Constitution at the Philadelphia Convention incorporated it in the preamble by asserting that government derived its authority from the consent of the governed. Since then popular sovereignty has become, as Bryce says, the "basis and watchword of democracy."<sup>12</sup>

In spite of our unflinching faith in the dogma of popular sovereignty, it must be admitted that it is highly vague and indeterminate. We fail to determine and definitely say who these sovereign people are. Do we mean the entire unorganised mass of people living in the State including women, children, idiots, insolvents and criminals? If so, then the sove-

10. Laski, H., *Grammar of Politics*, pp. 62-63.

11. Gilechrist, R. N., *Principles of Political Science*, p. 94.

12. Bryce, *Modern Democracies*, Vol. I, p. 143.

reignty of the masses has no meaning in practical politics. Mass of the people cannot be organised and without organisation a mass of people is a mob, a babel of tongues, who can act neither actively nor effectively. Organisation is the foundation of sovereignty. But if people become organised and follow their leaders, where is their sovereignty? Sovereignty of the people, Gettell says, by the very definition of the State, is a contradiction in terms. If by the State we mean a people organised for law within a definite territory, "some organisation and method of government is the legal one, otherwise no State exists."<sup>13</sup>

/It has been suggested that popular sovereignty refers to the sovereignty of the electorate. But sovereignty of the electorate has no legal basis unless it is expressed through channels prescribed by the constitution. The voters, in a representative form of government, do not themselves exercise actual sovereign power. They elect their representatives and it is through them, as members of the legislature, that the sovereign power is expressed. It, therefore, embraces manhood suffrage and the control of the legislature by the representatives of the people. But as a matter of reality the control of the legislature rests in the parliamentary majority party which is determined by the majority of the voters who had elected them. "The sovereignty of the people, therefore, can mean nothing more than the power of the majority of the electorate in a country where a system of approximate universal suffrage prevails, acting through legally established channels, to express their will and make it prevail."<sup>14</sup> Opinion, otherwise expressed by the voters, however powerful that opinion may be, is not valid unless clothed in legal form.

The exercise of suffrage is not a true indication of popular sovereignty. In a modern democratic State not all the people are entitled to vote. The electorate form a relatively small part of the total population and the majority of the electors, who are the ultimate political authority, form a still smaller portion of the entire population. According to Gettell not more than one-fifth of the population in any modern State are voters and within that number a majority would be but little more than one-tenth of the citizens.<sup>15</sup> Even these one-tenth of the citizens are not legally sovereign. Popular sovereignty, therefore, cannot be equated with sovereignty of the electorate.

The idea of popular sovereignty is, indeed, highly confusing. At the same time, we cannot ignore the popular appeal it has. Ritchie, and other political thinkers<sup>16</sup> have tried to establish that ultimate repository of political power is always found in the mass of the people. The State exists for the people and the mechanism of the State, i.e., government, should function in accordance with the wishes of the people. While sovereignty in the legal sense may not be placed in the people, yet they are potentially a check on the legal sovereign. No legal sovereign can for long brush aside the will of the people. If it does, there are possibilities of revolution. In fact, the tendency with every modern State is to make legal

13. Gettell, R. G., *Introduction to Political Science*, p. 100.

14. Garner, *op. cit.*, p. 165.

15. *Op. cit.*, p. 100.

16. Sidgwick, *The Elements of Politics*, p. 630.

sovereignty responsive to the popular demand as quickly as possible. We cannot, under the circumstances, ignore the force of "popular sovereignty". Gilchrist, however, suggests that "popular control" better indicates the idea underlying popular sovereignty."

**'De jure' and 'de facto' Sovereignty.** Distinction must also be made between *de jure* and *de facto* sovereignty. *De jure* is the legal sovereignty and it has its foundation in law. Its attribute is the right to govern and command obedience. But it may so happen that the *de jure* sovereign may not be able to command obedience while some one else, whose identity may or may not be recognised by law, is actually obeyed. That person or body of persons who actually exercises power, and who for the time being is able to enforce obedience, or to whose commands voluntary obedience is given by the bulk of the people, is called the *de facto* sovereign. The *de facto* sovereign may not be a legal sovereign. The criterion of sovereignty is actual obedience of commands. Bryce says that "the person or body of persons who can make his or their will prevail whether according to the law or against the law, he, or they, is the *de facto* ruler, the person to whom obedience is actually paid." The *de facto* sovereign may be a usurping king, or a dictator, or a priest or a prophet, "in either case the sovereignty rests upon physical power or spiritual influence rather than legal right." Let us take a familiar example. On October 28, 1922, when Mussolini's Black Shirts marched on Rome, the legal sovereign was Parliament. Mussolini became Prime Minister in the prescribed manner. Immediately after his appointment, he ruled Parliament and the country through Parliament. Parliament still remained the legal sovereign, but the actual or *de facto* sovereign was Mussolini. The commands which Parliament issued came from Mussolini and they were enforced by him as the leader of the Fascist Party. The legal sovereign did what it was told to do. Hitler, too, occupied similar position in Germany. He controlled the legal sovereign and he was the actual or *de facto* sovereign, or, to use Bryce's term, the practical sovereign. Stalin, who in his lifetime was transformed into a superman possessing supernatural characteristics, was really the actual sovereign in the USSR for about three decades.

[History abounds in examples of *de facto* sovereignties.] Many instances can be cited when legally constituted sovereign power was displaced in consequence of revolution or expulsion by a usurper. The (Bolshevik regime in Russia, following the Revolution of 1917, is the most familiar example in recent times of *de facto* sovereignty. Likewise, Bachha Saka usurped the throne of Afghanistan after the flight of King Amanullah and became the *de facto* sovereign in that country. Italy's conquest of Abyssinia and General Franco's usurpation of power in Spain are other illustrations of *de facto* sovereignty. General Naguib's *coup d'etat* in Egypt and the abdication of King Farouk is also illustrative of *de facto* sovereignty. Nassar succeeded Naguib. The events in Iraq, Pakistan, Sudan, Burma and in many other countries very recently tell the same story.]

The *de facto* sovereign is, thus, the strongest active force in the State



and capable of making its will prevail. But the *de jure* and *de facto* sovereignty should ultimately coincide, otherwise there is a danger of conflict between them. Garner says, "The sovereign who succeeds in maintaining his power usually becomes in the course of time the legal sovereign, through the acquiescence of the people or the reorganisation of the State, somewhat as actual possession in private law ripens into legal ownership through prescription".<sup>18</sup> New laws are made to give a definite status to *de facto* sovereign in order to expedite the extinction of the previously existing *de jure* sovereign. The *de facto* sovereign himself, too, will not like to continue his authority based upon physical force for an indefinite period of time. There is, as Bryce has rightly said, "a natural and instinctive opposition to submission to power which rests only on force".<sup>19</sup> The new sovereign, therefore, will endeavour to make his *de facto* claim converted into a legal right, because sovereignty established and exercised on legal basis makes obedience spontaneous and enduring.

The jurists of the Analytical School, however, outright reject the distinction between *de jure* and *de facto* sovereignty. They do not accept sovereignty in any other form or context except legal sovereignty, that is, what can be expressed in terms of law and sustained by law. "An unlawful sovereignty is a contradiction in terms", they assert. Austin has, accordingly, suggested that it would be more appropriate to use the terms, *de jure* and *de facto*, in respect to government rather than sovereignty.

### AUSTIN'S THEORY OF SOVEREIGNTY

Whatever is written about sovereignty today usually takes its colour, either by way of elucidation or criticism, from the teachings of John Austin. Austin, the famous English jurist, stated his theory, which is purely legal, a little more than a century ago and is contained in his *Lectures on Jurisprudence*, published in 1832.

Austin's views are largely based on the teachings of Hobbes. His purpose, like Bentham, is to distinguish clearly between law and morals, and the positive law which courts enforce and customs and practices which are sanctioned only by usage. Austin, therefore, primarily endeavoured to build up an exact juristic terminology and to present a clear outline of the organisation of a government's legal powers.<sup>20</sup>

The theory of sovereignty, as enunciated by Austin, depends mainly upon his view of the nature of law. Law, according to Austin, is a "command given by a superior to an inferior."<sup>21</sup> From this definition of law he develops his theory of sovereignty in the following words:—

"If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience, from the bulk of

18. Garner, J. W., *Introduction to Political Science*, p. 168.

19. Bryce, *Studies in History and Jurisprudence*, Vol. II, p. 516.

20. Sabine, G. H., *A History of Political Thought*, p. 654.

21. Austin says, "Every positive law, or every law, simply and strictly so called, is set by a sovereign person or a sovereign body of persons to a member or members of the independent political society wherein that person or body of persons is sovereign or supreme."

a given society, that determinate human superior is sovereign in that society, and that society (including the superior) is a society political and independent.<sup>22</sup>

Austin's doctrine of sovereignty may be reduced to the following propositions:—

- (i) That there is, in every independent political community, some person or body of persons who exercise sovereign power. Sovereign power is as essential in every political society "as the centre of gravity in a mass of matter."<sup>23</sup>
- (ii) That the sovereign is a determinate person or body of persons. "He is not necessarily a single person: in the modern western world he is very rarely so; but he must have so much of the attributes of a single person as to be determinate."<sup>24</sup> The State for Austin is a legal order in which there is a determinate authority acting as the ultimate source of power. Sovereignty, therefore, neither resides in the general will as Rousseau conceived, nor in the mass of the people, nor in the electorate as none of them is a determinate body. Nor has the sovereignty of God or Gods any significance in the business of the State. It is concerned with man and every State must have a determinate human superior who can issue commands and create laws. Hence human laws and not divine laws are proper subject of state activity.
- (iii) That such a determinate human superior must not himself obey any other higher authority. His will is supreme over all individuals and associations and he is subject to no control, direct or indirect. The determinate human superior may act unwisely, or dishonestly, or in an ethical sense, unjustly, but for the purpose of the legal theory the character of his action is unimportant. So long as laws emanate from the legal sovereign they are commands which must be obeyed.
- (iv) That the sovereign receives habitual obedience from the bulk of the community. That is to say, obedience must be a matter of habit and not merely occasional. Obedience rendered to an authority for a short time does not make it a sovereign. Austin's thesis is that obedience to the sovereign authority must be continuous, regular, undisturbed and uninterrupted. Moreover, obedience rendered to the sovereign must not necessarily be from the whole of the society. It is enough for purposes of the sovereign power if it comes from the bulk of the society—its large majority. Where habitual obedience from the bulk of

22. Austin then proceeds: "To that determinate superior the other members of the society are dependent. The position of its other members towards that determinate superior is a state of subjection or a state of dependence. The mutual relation which subsists between that superior and them may be styled the relation of sovereign and subject, or the relation of sovereignty and subjectivity."

23. Maine, H., *The Early History of Institutions*, p. 339.

24. *Ibid.*, p. 351.

the society is not forthcoming there is no sovereign power. Thus, sovereignty involves not only the submission of the many but also its permanence.

- (v) That command is the essence of law. Whatever the sovereign wills is law, and law prescribes to do certain things and not to do others. Failure to obey laws, as commanded, is visited by a penalty.
- (vi) That the sovereign power is indivisible. It is a unity and incapable of division. Division of sovereignty means destruction of sovereignty.

Austin's analysis of sovereignty embraces the existence of the supreme power which is determinate, absolute, illimitable, inalienable, indivisible, all-comprehensive and permanent. It is subject to no limitation or command by some other superior. But Austin's theory is a lawyer's view of sovereignty and it has been subjected to a searching criticism.

**Criticism of the Theory.** Sir Henry Maine, together with other Historical Jurists,<sup>25</sup> is the most vehement critic of the Austinian theory of sovereignty and that he did during the lifetime of Austin. Sovereignty, according to Maine, does not reside in a determinate human superior. "A despot with a disturbed brain," he says, "is the sole conceivable example of such sovereignty."<sup>26</sup> Maine emphasizes the existence of "vast mass of influences, which we may call for shortness moral, that perpetually shapes, limits, or forbids the actual direction of) the forces by its (sovereign.)"<sup>27</sup> He cites the example of Ranjit Singh whom Maine characterises as an absolute despot, apparently possessing qualities of Austin's conception of the sovereign power. (Ranjit Singh, Maine says,) "could have commanded anything; the smallest disobedience to his commands would have been followed by death or mutilation."<sup>28</sup> Yet, Ranjit Singh never (once in all his life" issued a command which Austin could call a law). . . The rules which regulated the life of his subjects were derived from their immemorial usages, and these rules were administered by domestic tribunals, in families or village communities.<sup>29</sup> Even a despot like Ranjit Singh, Maine concludes, dared not issue a command which could compel an unwilling people to change their deep-rooted habits and customs. If he had dared it, he would have confronted the risk of revolution. (Ranjit Singh's laws were primarily derived from customs, usages, and religious injunctions and they were administered by the village panchayats.) But it is not only in regard to "oriental society" that Maine finds Austin's analysis inadequate. In the "world of western civilisation," he says, no sovereign, however despotic, could disregard "the entire history of the community, the mass of its historic antecedents, which in each community determines how the sovereign shall exercise or forbear from exercising, his irresistible coercive power." (Austin's conception of a determinate sovereign is,

25. Refer to Sidgwick's, *Elements of Politics*, Appendix ( \ ), p. 651.

26. Maine, H., *The Early History of Institutions*, p. 359.

27. *Ibid.*

28. *Ibid.*, p. 380.

29. *Ibid.*, pp. 380-81.



also, inconsistent with the well-accepted idea of popular sovereignty. It ignores the power of public opinion and does not take into consideration the existence of political sovereignty, which is now believed to be the ultimate sovereign power in a State. Sir Henry Maine, accordingly, concludes that it is a historical fact that sovereign has never been determinate.

The Federal State presents another difficulty of vesting sovereignty in a determinate person or body. Sovereignty is indivisible and the sovereign body which has the power to amend the Constitution cannot be described as a determinate body. In the United States, for example, the Constitution amending body is Conventions or two-thirds majority of each House of Congress which may propose amendments, and State Legislatures or State Conventions which may ratify them. In India, too, the Constitution amending authority is sovereign, but this sovereign authority is diffused. There are three methods of amending the Indian Constitution. In some cases it is a simple majority of both the Houses of Parliament, in others, which are specified in the Constitution, it is the two-thirds majority of the members present and voting in each House of Parliament plus a majority of the total membership in each House, and ratified by the legislatures of one half of States, and for the rest it is a majority of the total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting in each House of Parliament.

Next Austin's definition of law that it is a "command given by a superior to an inferior," which forms the basis of his theory of sovereignty, cannot be accepted as a simple truth. Laski says that to think of law as simply a command is even for the jurist, "to strain definition to the verge of decency."<sup>30</sup> No sovereign can ignore the existence of customary law which has grown through usage in every country. Customary law is not the fiat of a determinate superior, and in earlier stages of society laws were seldom, if ever, positive commands of a sovereign. Ranjit Singh, to quote Maine, "never issued a command which Austin would call a law. He never made a law and never did or could have dreamed of changing the civil rules under which his subjects lived."<sup>31</sup> Even a sovereign legislative assembly, like the British Parliament, dare not pass a law which aims to flout the established customs of the country. (MacIver has aptly said) that "a State has little power to make custom, and perhaps less to destroy it, although indirectly it influences customs by changing the conditions out of which they spring."<sup>32</sup> Custom is not a deliberate statute; it is the outcome of ages and even an autocrat, like Ranjit Singh or Peter the Great, must be the guardian and servant of customs, if he desires to obviate the possibilities of a revolution.<sup>33</sup> (For, custom, "when attacked, attacks law in turn, attacks not only the particular law which opposes it, but what is more vital, the spirit of law-abidingness."<sup>34</sup>)

Austin himself was fully conscious of the force behind customs and,

30. Laski, H., *A Grammar of Politics*, p. 51.

31. Maine, H. *The Early History of Institutions*, p. 382.

32. MacIver, *The Modern State*, p. 160.

33. Gilchrist, R. N., *The Principles of Political Science*, p. 114.

34. McIver, R. M., *The Modern State*, p. 161.

accordingly, <sup>and</sup> he asserted "whatever the sovereign permits, he commands." Austin argues that customs, unless enforced by Courts of Justice, are merely "positive morality"; rules enforced by opinions. But as soon as Courts of Justice enforce them, they become commands of the sovereign, conveyed through the judges who are his delegates or deputies.

The conception of 'law', prior to the Analytical School, conveyed the notion of **order** first and then the notion of **force**. The Analytical Jurists, on the other hand, lay down unhesitatingly that the notion of force has priority over the notion of order. Austin lays too much emphasis on force and prescribes that disobedience of law is visited by a penalty. It means, in the words of the Analytical School, that people obey laws for fear of punishment. The modern view is that we obey laws not because their disobedience is accompanied by punishment; we obey them because there is in us the spirit of law-abidingness. Laski says, "The notion of command" in law "is contingent and indirect and the idea of penalty is, again, save in the most circuitous way, notably absent."<sup>35</sup> He holds that there is a character of uniformity in law in which the element of command is, practically speaking, pushed out of sight.<sup>36</sup> It is also out of tune with the recent developments about the nature and functions of the State. In a Welfare or social-service State of our conception, the content of law is of greater importance than its source. We obey it, because it promotes social solidarity, as described by Leon Duguit. He pushes his argument to the extent that laws are not created by the State, but it is the laws that create the State.

*externally it is limited by sovereign forces.*

⑤ Austin's theory is further criticised on the ground that it invests the sovereign with absolute and illimitable powers. The Pluralists maintain that the State is an association like various other associations and the sovereign authority cannot be invested with unique sovereign powers. They oppose the Austinian doctrine of a single and unified sovereignty, and emphasize the importance of associations, which are, for their purpose, as sovereign as the State is for its purpose. (Sovereignty, accordingly, is neither unity nor absolute). It is diffused and hedged all round within and without the State. (Externally, Austin's sovereign power is limited by the prescriptions of the international law) and the concept of internationalism has made it still more incompatible. Austin's theory of sovereignty, therefore, is now regarded not only as a legal fiction, but a baneful and dangerous dogma which should be expunged from the literature of international relations. Laski is even of the opinion that the notion of an independent sovereign State is, on the international side, fatal to the well-being of humanity. It is a bold, but realistic statement which Laski makes and the developments since the First World War (1914-18) testify it. Today, the States constitute an international society and it is commonly realised that the increasingly vast problems which concern the well-being of humanity are not local but international. The problems of food, health, education, population are in essence local problems, but their solutions are found in the deliberations of international organisations, like the W.F.O., the W.H.O., the UNESCO, etc.—all agencies of the United

35. Laski, H., *A Grammar of Politics*, p. 62.

36. *Ibid.*

Nations. Even the restoration of order and establishment of lawful government within the country has become an international concern.

**Conclusion.** (It is, under these circumstances, impossible to make the legal theory of sovereignty valid for political philosophy, as it postulates for the sovereign such powers as cannot in fact be exercised. Moreover, it narrows down "the meaning of vital terms to a content which, if maintained, would be fatal to the existence of society."<sup>37</sup> We cannot accept law, which is an important factor in the life of the State, from the purely legal point of view. It must be built upon general social environments. To divorce it from all these forces and influences is to defeat the very purpose of law. It should, however, be admitted that as a conception of strict legal nature of sovereignty, Austin's theory is clear, matter of fact, and logical.)

### PLURALISM

**Monistic vs. Pluralistic Theory.** The monistic theory of sovereignty endows the State with a unitary sovereign power, either as the direct source of all political authority as such or as the source of legal authority. It is supreme over all individuals and associations within its territorial limits and is externally independent of other States. The monistic theory of sovereignty, therefore, regards all other associations as the creation of the State and dependent for their continued existence upon the will of the State. The functions which these associations perform are those that are conceded to them by the State.

The pluralists, on the other hand, regard the monistic theory of sovereignty as a pernicious and futile doctrine. The pluralistic State is simply a State in which there exists no single source of authority that is all-competent and comprehensive. There is no unified system of law, no centralised organ of administration and no generalisation of political will. "On the contrary, it is a multiplicity in its essence and manifestation, it is divisible into parts and should be divided." Pluralism, in brief, undertakes to transform the State. It criticises and "discredits" the State as it is, and seeks to reduce it from its place of "honour to servitude."<sup>38</sup> Lindsay, for example, says, "If we look at the facts it is clear enough that the theory of sovereign State has broken down." The late Professor Laski, who was the most prolific critic of the monistic theory, said, "It is impossible to make the legal theory of sovereignty valid for political philosophy." He was of the definite opinion that "it would be lasting benefit to political science if the whole concept of sovereignty were surrendered,"<sup>39</sup> or, as Krabbe puts it, "the notion of sovereignty must be expunged from political theory."

37. Hsiao, Kung Chuan, *Political Pluralism*, p. 8.

38. G. D. H. Cole, who is one of the central figures in advocating Pluralism, writes, "But as man has made the State, man can destroy it; and as man has made it great, man can restrict it. Moreover, as man has made the State, man can make something greater, something more fitted to exercise a final sovereignty, or at least to provide a final court of appeal." As quoted in Hsiao's *Political Pluralism*, p. 1.

39. Laski, H. J., *Grammar of Politics*, p. 55.



**Pluralistic Theory Explained.** Laski says, that sovereignty is neither absolute nor unity. It is pluralistic, constitutional and responsible. He asserts that man's social nature finds expression in numerous associations or groups pursuing various ends—religious, social, economic, professional, political and recreational. The State is one of these groups and no one of these groups is superior, normally or practically, to others. All associations, which enter into the life of man, arise naturally and spontaneously and all act, within the sphere of their respective activities, independently of State control. Though the State is a primary and most important association, yet it can only claim to be, what Gilchrist calls, *primus inter pares*, or first among equals. Being only one among many associations, the State has no rightful claim to eminence and, thus, it cannot be the sole repository of power or focus of loyalty. If it is sovereign, so are other associations and man's loyalty to them is as abiding as it is to the State. It is also possible that his loyalty to some group or organization of which he is a member may receive priority over his loyalty to the State. There are Communists whose loyalty to their party is stronger than their loyalty to their country. Members of the Society of Friends have a conscientious objection to being conscripted into the army, because they consider morally wrong to fight for one's country. The State, accordingly, cannot in any important sense be said to be sovereign in its relations to other associations which come into existence independently of the State and function exclusively by themselves.<sup>40</sup> Each association has its own laws and it exacts obedience to those laws independently of the State.

The Pluralists, in fact, reject the distinction, which is so neatly made, between the State and government. They insist on realistic Political Science and consider the distinction between the two as an artificial product of legal reasoning and logical refinement. Duguit is the foremost in this respect. He asserts that juristic entities being legal fictions have no place in realistic as distinguished from metaphysical discussion. We only know the government as a matter of reality and which functions actually. The immediate power belongs to the Government and, as such, the State and Government are in fact the same. Laski also speaks of the State as the government and he rejects, likewise, the legalistic theory of the personality of the State.

The pluralistic theory finds its practical explanation in the bewildering variety of associations and groups which exist to promote the industrial, political and other interests of man. All these groups, as Laski says, determine, "quite largely, his choice of friends, of opportunities, of a career."<sup>41</sup> They plan his activities and provide him with opportunities for the expression of his desires. "They seek to give him mastery of the event, to enable him in concert with likeminded men, to control the environment to a destiny he wants."<sup>42</sup> The society, in fine, the Pluralists maintain, far from consisting of a mass of isolated individuals, is actually

40. Coker, R. W., *Recent Political Thought*, p. 504; also refer to Dunning, Vol. IV, *Political Theories Recent Times*, p. 89.

41. Laski, *Grammar of Politics*, p. 256.

42. *Ibid.*, p. 257.

a web of associations and groups that link men and women with each other. The old concept that the society is an association of individuals in a common life does not hold good any longer. It is a "nation of joiners." Pluralism is, thus, a natural accompaniment of the "atmospheric" views of society and human freedom. And as a consequence therefrom the State is, in the words of Barker, "more as an association of individuals, already united in various groups for a further and more embracing common purpose."<sup>43</sup> It means that the State is only one among many other forms of human associations, and as compared with other associations it has no superior claims to the individual's allegiance. The State and the associations and groups, as Maitland says, are species of the same genus.

The fact that society contains many association has a number of consequences. First, it takes individuals out of a state of isolation and gives them a chance to participate in the common endeavour, that is, the good of man and the society. Secondly, it permits citizens to have a variety of loyalties and allegiances thereby preventing the possibility that they might live under a single source of authority. Finally, "a network of voluntary associations stands as a 'buffer' between the relatively powerless individual and the potentially powerful state."<sup>44</sup> The Pluralists, thus, regard the State as essential in the life of the individual as other associations composing the society. They are not against the State, but would discard the sovereign State with its absolute and indivisible power. They denounce coercive government and dispute its right, and even its power, to compel obedience. They believe that the various associations and groups fulfil the many and diverse wants of the individual and help to make his life whole and rich, and, accordingly, assert that any interference on the part of the State, and for that matter the government, in the independent existence and functioning of these associations is not only undesirable but defeats the purpose for which the State came into existence and it continues to exist. Greaves has succinctly said, "Order is merely a prerequisite for the achievement of the ends which the members of the association have in common and realization of which the state may be an instrument for realizing."<sup>45</sup> The State is not merely a system of order. It is a co-operative organization for the promotion of the well-being and development of the personalities of its members.

The central idea of Pluralism has been beautifully summed up by Gettel. He says, "The Pluralists deny that the state is a unique organisation; they hold that other associations are equally important and natural; they argue that such associations for their purpose are as sovereign as the State is for its purpose. They emphasize the inability of the State to enforce its will in practice against the opposition of certain groups within it. They deny that the possession of force by the State gives it any superior right. They insist on the equal rights of all groups that command the allegiance of their members and that perform valuable functions in society. Hence sovereignty is possessed by many associations. It

43. *Political Thought in England from Herbert Spencer to the Present Day*, pp. 175-83.

44. Andrew Hacker, *The Study of Politics*, p. 25.

45. Greaves, H. R. G., *The Foundations of Political Theory*, p. 14.

is not an indivisible unit; the State is not supreme or unlimited." All this may be reduced to the following bare analysis:—

1. The parts of the State are as real as the whole. The State is, therefore, distributive not collective.

2. The distinction between the State and Government is not real. Both are the same. The State does not command, it serves and is a public or social service organization.

3. The State is one among other groups which man needs to fulfil the purpose of his life. His allegiance is, accordingly, not unified. It is divided and diffused. His allegiance to the State may conflict with his allegiance to other associations and may even take priority over his loyalty to the State.

4. The State is, thus, not in any way a mysterious formation having supernatural or metaphysical characteristics. Omnipotent sovereignty is not true to facts. It is not unity, but federal.

5. The State can serve its purpose by and through goodwill alone. It cannot destroy associations and groups as it cannot create them. Nor can it enforce its will against the opposition of associations and groups within it. Since the State expresses the will or purpose of the human beings within it, it "does not enjoy any necessary pre-eminence for its demands," as Laski puts it. As the State is only one of the associations to which the individual happens to belong, "politically there is no such thing as sovereignty at all", he concludes.

**Development of the Theory.** The theory of Pluralism originated in the writings of Otto V. Gierke and F. W. Maitland in the last quarters of the nineteenth century, although earlier political thinkers, too, had recognised the part associations played in the life of man. The doctrine of Gierke and Maitland is that various associations which exist within any society are instinctive to man. They are not hypothetical, fictitious or created from without. Each association has a real personality and a collective consciousness and will. Each is independent of the State and may be even prior to it. According to Gierke all such associations have their own rights, duties and functions. He argues that "the State should accept the common point of view that permanent associations have rights and duties as groups, whether or not the State has accepted them as corporations."<sup>46</sup>

Various Sociologists have also criticised the traditional structure of society. They regard political side of the life of man as only one part of human activity and, accordingly, would seek to concentrate on group life in its various manifestations. Emile Durkheim<sup>47</sup> argued for the restoration of the ancient occupational groups as a definitely recognised public organisation. "We have at present," he maintained, "no clear principles and no clear juridical sanctions through which to determine relations between employers and employees, between competing employers, and between employers or employees and the public." The activities of any pro-

46. As quoted in R. W. Coker's, *Recent Political Thought*, p. 504.

47. *Ibid.*, p. 506.



fession could be regulated only by a group embracing its functions and needs. The professional groups must, therefore, be established for securing the economic regulation of all such professions and for purposes of political representation. Geographical representation, it was asserted, had lost its political, economic and social utility and, as such, geographical divisions should be replaced by vocational divisions which would reflect more accurately the various social interests.

There are other writers who have emphasized the autonomous rights of particular groups or who support some special type of social organisation. They protest against the omniscience of the State. Dr. Figgis criticised the efforts of the modern political leaders, "to invade the proper spheres of such essential social groups as churches, trade unions, local communities, and the family." The State, he said, "did not create the family nor did it create the churches; nor even in any real sense can it be said to have created the club or trade unions, nor in the middle ages, the guild or the religious order, hardly even the universities or the colleges within the universities; they have all arisen out of the natural associative instincts of mankind, and should all be treated by the supreme authority as having a life original and guaranteed, to be controlled and directed like persons, but not regarded in their corporate capacity as mere names."<sup>48</sup> Figgis gives to the State a superior right over all other associations, no doubt, but this superior right is only of co-ordination and adjustment.

Prof. Laski recognised complete autonomy for all associations. He emphasised that the parts of the State are as real as the whole. "We do not proceed," he said, "from the State to the parts of the State on the ground that the State is more fundamentally united than its parts, but we, on the contrary, admit that parts are as real and as self-sufficient as the whole."<sup>49</sup> The essence of his arguments may be stated in his own words. He said, "But because society is federal, authority must be federal also."<sup>50</sup> Laski assailed the moral validity of the doctrine that attributes sovereignty to the State. The State, in his opinion, has no right to the allegiance of an individual except in so far as his conscience gives assent. "The claim of authority upon myself is... legitimate proportionately to the moral urgency of its appeal."<sup>51</sup> He further said, "The only State to which I owe allegiance is the State in which I discover moral adequacy; and if a given State fails to satisfy that condition, I must, to be consistent with my own moral nature, attempt experiment... Our first duty is to be true to our conscience."<sup>52</sup> He tersely summed up, "We give to this particular group (the State) no particular merit."<sup>53</sup>

Laski would, thus, deny to the State any superior claim over other associations. He would even condition obedience to its authority. His

48. Figgis, J. N., *Churches in the Modern State*, p. 47.

49. Laski, H., *The Problem of Sovereignty*, p. 9.

50. Laski, H., *A Grammar of Politics*, p. 271.

51. *Ibid.*, p. 249.

52. *Ibid.*, p. 289.

53. Laski, H., "The Personality of Associations," *Harvard Law Review* XXIX (1915-16), p. 426, and as quoted in R. W. Coker's *Recent Political Thought*, p. 508.

general view was that the "sovereignty of the State will pass, as the divine right of the kings had its day." The State would continue only to co-ordinate the functions of various other associations without any right to assume omnipotence. Powers, in this way, would become co-ordinate instead of being hierarchical, and authority federal.

There are many other contemporary political writers who have advocated Pluralism—MacIver, Lindsay, Barker, G. D. H. Cole, Miss Follet and others. MacIver, for example, accepts the State as an association like various others within the community, although it exercises functions of a unique character. He gives the State an essential character of a corporation possessing "definite limits, definite powers and responsibilities." The business of the State, in his opinion, is merely to give "a form of unity to the whole system of social relationship." Barker does not accept the conception of the "real personality" of groups, but he admits that permanent groups within society existed prior to the State, and each of them has a corporate character and functions of its own. The State to him is a group of groups or a community of communities.

*Merits* — **Evaluation of the Pluralistic Theory.** What the Pluralists assert is true to a great extent. Our life, undoubtedly, is a group life and modern society is honeycombed with such organisations. No one can deny that voluntary groups and associations play an important role in the local and national life of the people. Man is not merely a citizen. He has his duty to the family, to the community and to himself. He owes allegiance to all such associations which make his life full and contribute to his well-being.

The Pluralist theory is a protest against the elevation of the State to mystical heights. Hegel viewed it as "God on earth" and invested it with not only supreme legal, but also supreme moral authority. Pluralism demarcates and limits the functions of the State and defines its authority. It accepts the State at par with other associations and demolishes the edifice of its glorification which Hegel built. Miss Follet in her admirable book, *The New State*, sums up the merits of Pluralism as follows:

- (1) The Pluralists "prick the bubble of present State's right to supremacy. They see that the State which has been slowly forming since the Middle Ages with its pretences and unfulfilled claims has not won either our regard or respect."
- (2) "They recognise the value of the group and they see that the variety of our group life today has a significance which must be immediately reckoned within political life." They also repudiate the notion that the groups are given authority by the State.
- (3) "They plead for a revivification of local life." The pluralists, thus, aim at decentralising authority and feel that the most imminent of our needs "is the awakening and invigorating, the educating and organising of the local unit."
- (4) "The Pluralists see that the interest of the State is not now always identical with the interests of its parts."
- (5) Pluralism is "the beginning of the disappearance of the crowd."

(6) Finally, Pluralism "contains the prophecy of the future because it has with keenest insight seized upon the problem of identity of association, of federalism."

But it may be submitted that these associations can exist, prosper, and achieve their objects only within the framework of the State, and that we cannot abandon the doctrine of the sovereignty of the State. Without sovereignty there can be no State and without the State we cannot have variety of associations, because for the collective life of man there must be some political organisation. If the State is to be abolished and replaced by autonomous associations, it is "not far removed from a condition of theoretical anarchy, in which each individual's conscience is the arbiter of his actions."<sup>54</sup> Dr. Figgis described the State as the Society of "Societies" and assigned to it "a distinctive function and a superior authority" as an agency of co-ordination and adjustment. He asserted that one of the chief values in the several smaller groups consists in the fact that they foster loyalty to the State. To quote Dr. Figgis again, "It is largely to regulate such groups and to ensure that they do not outstep the bounds of jusice that the coercive force of the State exists."<sup>55</sup>

The Pluralists, in fact, have not attempted to make these groups independent of the State. The State, Gierke says, "is distinguished from other social bodies by its position above them; for the State alone there is no limit through a higher collective existence; its will is the sovereign general will, the State is the highest *Machtverband*."<sup>56</sup> Paul Bancour regards the State as the sole representative of general interests and national solidarity. He would assign to the State the duty of preventing any group from acting aggressively towards others and its members. Lindsay recognises the State as the "organisation of organisations." Miss Follett criticises the pluralists' conception of the State as "competing" for the citizen's loyalty. Even Professor Laski did not propose to get rid of the State altogether. He recognised the distinction between the State and an association and defined the State as "the association to protect the interests of men as citizens." He agreed that "to satisfy the common needs, it must control other associations to the degree that secures for them the service such needs require." He, also, accepted the need of "ultimate reserve power of the State." Laski finally conceded: "And however much we may reduce the direct administrative capacity of the political State, the fact remains that once it is charged with the provision of services which men stand in common need, it has their interests in trust to a degree with which no other body can, at least in a temporal sense, compete. Even if we abstract from the modern State the final control of international affairs, the civic area of internal matters that is left seems, in any casual glance, overwhelming."<sup>57</sup>

We may, then, conclude that in spite of their convincing arguments the Pluralists fail to "expunge" the notion of sovereignty from political theory as they claim. There is yet another interesting and perhaps some-

54. Gilchrist, R. N., *Principles of Political Science*, p. 104.

55. As quoted in Coker's *Recent Political Thought*, p. 513.

56. *Ibid.*, p. 512.

57. Laski, H., *The Problems of Sovereignty*, p. 75.



what surprising fact to note. "While most Pluralists have sought to drive sovereignty out of the front door of their new society, they quietly smuggle it again through back door, more or less disguised, but nevertheless a sovereignty." Such, indeed, is the case with Krabbe's "legal community" ruled by the sense of right, Duguit's monistic principle of "social solidarity", and Cole's "democratic supreme court of functional equity." The Pluralists, thus, attempt to abolish sovereignty, but are finally compelled to restore it. There is always some ultimate authority in society whether we find it in "natural law", "in reason", in "social solidarity", or in the individual's "sense of right". As soon as we admit the existence of an ultimate power, we must provide a channel of its expression, that is, a "determinate person", as the jurists say, "through whom the voice of the common good is heard". The Pluralists may refuse to call this channel the sovereign person. But the fact is that with whatever name we may designate it, sovereignty is still sovereignty. It does not lose the quality of supremacy no matter by whom and in which manner it is exercised. In fact, the Pluralists are not out to destroy sovereignty, but to recognise it so that the political power shall become the true expression of the community. "To destroy sovereignty", as Hsiao says, "is as dangerous as it is futile."<sup>58</sup>

The possession of power does not mean its perpetual exercise whenever the sovereign's command is opposed. If the opposition is resolute and determined, common sense and good judgment may suggest the sovereign to give way. If he does not, perhaps the cost would be too great, disproportionate to the satisfaction of vindicating the law. Would it have been wiser to meet the Indian demand for Swaraj and Egyptian nationalism with wholesale military repression instead of granting independence to both the countries? The sovereign will always hesitate in taking drastic action. It is easy to recall many occasions on which the sovereign has given way before group pressure. The behaviour of the legal sovereign can best be explained by its dependence on the political sovereign. If the political sovereign has not been reduced to impotence as the mere tool of a dictator, it hangs over the head of the legal sovereign like a sword of Damocles. Even a dictator is afraid of his future and he will resist to take an action which is likely to jeopardise his existence. Professor MacIver appropriately says that "all governments depend simply upon a margin of strength, represented by the balance of opinion in their favour" and "an act which reduces the margin weakens its authority entirely out of proportion to the turn over of opinion."<sup>59</sup> If the legal sovereign flouts public opinion, when the voters finally act, they will entrust legal sovereignty to a different set of men and so reverse the unpopular policy of repressive actions.

But it does not mean that the entire pluralistic criticism of the monistic State is a vain attempt. The Pluralists have done a useful service by emphasizing upon individual freedom and introducing the group into political thought. They have thereby pointed out the way to a more concrete method of social organization than that hitherto generally employed.

58. *Political Pluralism*, p. 140.

59. MacIver, R. M., *The Modern State*, p. 292.

Sovereignty, they insist, must not be too narrowly political or legal. It must be representative of the diversity of social purposes—economic, social, religious, cultural, and other interests as well. In this way sovereignty becomes the real and living manifestation of social purposes. The authority of such a sovereign is vastly more extended and ultimate than any sovereign power conceived by monistic lawyers who always take a narrow and abstract view of it. Such a conception of sovereignty retards the forces of absolutism set into motion by Hegel and his followers.

## CHARACTERISTICS OF SOVEREIGNTY

The traditional distinctive attributes or characteristics of sovereignty are: permanence, exclusiveness, all-comprehensiveness, inalienability, indivisibility, and absoluteness.

① **Permanence.** Sovereignty is permanent and it continues uninterrupted so long as the State exists. Changes in government do not mean cessation of sovereignty. Government changes, but the State endures and so does sovereignty. It does not cease with the "death" or temporary dispossession of a particular bearer or the reorganisation of the State, but shifts immediately to a new bearer as the centre of gravity shifts from one part of a physical body to another when it undergoes external change.

**Exclusiveness.** The sovereign power is exclusive and there is none to compete with it. There can be only one sovereign power in a State which can legally command obedience of its inhabitants. To hold otherwise would be to deny the principle of the unity of the State and "to admit the possibility of an *imperium in imperio*."

② **All-comprehensiveness.** Sovereignty is universal in character and it extends to all persons and associations within its territorial limits. It is "co-extensive in its operation with the jurisdiction of the State and comprehends within its scope all persons and things in the territory of the State. The modern State does not recognise the existence of any *staatlos* within its jurisdiction." There can be neither any person, nor any organisation, however universal, which can affect the sovereignty of the State.

The only exception to the universality of sovereignty is the extra-territorial jurisdiction allowed to embassies. An embassy is subject to the law of the State of which she flies the flag and the ambassador and his staff are amenable, within the premises of the embassy, to the law of their own country. The law of the State in which the embassy is located does not apply to it. It must, however, be remembered that the extra-territorial sovereignty is only a matter of international courtesy and is, under no circumstances, a limitation on the sovereignty of the State. If any State wishes, it can deny the grant of this privilege and history provides many such examples.

**Inalienability.** The sovereignty of the State cannot be alienated. Liber has said that "sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life and personality without self-destruction." The State and sovereignty are essential to each



other. But when the State cedes a part of its territory, it does not mean that the State has lost its sovereignty. It is, on the other hand, "an excellent example of the working of the sovereignty of the State. All that happens is that, whereas formerly there was one State, now, with such cession, there are two States."<sup>61</sup>

Closely connected with inalienability is the attribute of imprescriptibility of sovereignty. This means that sovereign power cannot be lost with the lapse of time by the non-exercise of such power. "Sovereignty cannot be lost," says Garner, "by mere lapse of time, as property in land may be lost by prescription at private law."

**Indivisibility.** The Pluralists believe in the duality of sovereignty. The legal sovereignty aims at its unity. It is asserted that sovereignty is indivisible and division of sovereignty means destruction of sovereignty. Jellinek has remarked that the notion of a "divided, fragmented, diminished, limited, relative sovereignty" is the negation of sovereignty. If we accept the Pluralist point of view and concede sovereignty to all associations and groups, it is simply to paralyse the existence of the State. The existence of several supreme wills, each equally capable of issuing commands and exacting obedience, would obviously result in conflicts, disintegration of the State, and ultimately in its extinction. Wherever it may reside, sovereignty "is an entire thing: to divide it is to destroy it. It is the supreme power in a State, and we might just as well speak of half a triangle as of half a sovereignty."<sup>62</sup>

But all do not subscribe to the view that sovereignty is unity. The question of divided sovereignty was brought into prominence when the United States of America emerged as a Federation. A federation is normally the result of a union between hitherto sovereign States. It is one of the essential features of a federation that while agreeing to a union the federating units must preserve their individuality. The subjects of administration are, accordingly, divided between the newly created central government and the federating units. At the time of adopting the Constitution, it was generally held by the publicists in the United States that both the central government and the units of a federation remain sovereign within their own respective jurisdiction and sovereignty, as such, is indivisible. This theory was strongly supported by Hamilton and Madison. It was endorsed by the Supreme Court in *Chisholm v. Georgia* (1792) wherein it was held that "the United States are sovereign as to all the powers of government actually surrendered by the States while each State in the union is sovereign as to all the powers reserved." This theory of dual sovereignty received the approval of such eminent constitutional lawyers as Judges Cooley and Story and political writers as De Tocqueville, Hurd and many others. "There is no question," says Hurd, "that the statesmen of all sections who made the constitution of the United States understood that political sovereignty was capable of division according to its subjects and powers."

But this is not a correct estimate of sovereignty in a federation. A federal union does not envisage two States. It makes only one State and,

61. Gilchrist, R. N., *Principles of Political Science* p. 110.

62. As quoted in J. W. Garner's, *Political Science and Government*, p. 173.



therefore, one sovereignty. The units of a federation are not really States. It is a misnomer if they are named as such. They are subordinate law-making bodies with guaranteed powers. They are not sovereign, but autonomous within their sphere of powers. What is divided in a federation, between the centre and units, are the powers of government, and not sovereignty. Those who believe in the division of sovereignty confuse the State and government. Calhoun says, "There is no difficulty in understanding how powers appertaining to sovereignty may be divided and the exercise of one portion be delegated to one set of agents and another portion to another, or how sovereignty may be vested in one man, in a few or in many. But how sovereignty itself, the supreme power, can be divided....it is impossible to conceive."

Where, then, do we discover sovereignty in a federation? The jurisdiction and powers of legislatures at the centre and in the units, called States both in the United States and India but Provinces in Canada, composing a federation are limited. They derive their authority from the Constitution and each gives legal expression to its will within prescribed limits. If they attempt to go beyond the powers therein enumerated, the Courts are likely to hold such an act invalid. The legal sovereign in a federation is the body which can amend the Constitution and by doing so, gives commands to every other organ of government. The amending body is supreme: legislatures are subordinates.

**Absoluteness.** The sovereignty of the State is absolute and unlimited. It is subject to no legal limitations, either internally or externally. Without sovereignty there can be no State. It is the supreme characteristic of Statehood. Sovereignty, therefore, implies absence of any restraint on its authority either within or without. To hold otherwise is to create some higher power by which the sovereign authority is limited. Absoluteness of sovereignty also implies its universality, permanence and indivisibility.

All this is true in terms of law. But there is no such thing on earth as absolute sovereignty. It is through human agency that the sovereign power is expressed and exercised. Man can never be perfect and independent. Dependence is his very nature. How can he be absolutely sovereign then? Even the most despotic ruler is limited by his natural limitations. Sovereign power is, also, limited by what Gilchrist calls "human endurance". He says that religion, education, character and environments of the sovereign must mould his action.<sup>63</sup> There are, accordingly, limits of individuality, expediency and commonsense. Moreover, some writers hold the view that man possesses certain natural and inherent rights. These rights exist independently of the State and no sovereign can supersede them. Bluntschli says that even the State as a whole is not almighty, for it is limited externally by the rights of other States and internally by its own nature and by the rights of its individual members.

The doctrine that the State is absolutely supreme is fallacious and even dangerous. We have already discussed the nature of political sovereignty and the vast mass of influences which perpetually shape, limit or

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63. Gilchrist, R. N., *Principles of Political Science*, p. 107.

forbid the actual direction of the forces of society by the sovereign. There are some who even maintain that sovereignty is limited by the prescriptions of divine law. Sir Henry Maine tried to establish that the sovereign can, under no circumstances, act contrary to the immemorial customs and long-established traditions. No autocrat, to repeat what we have already said, be he Ranjit Singh, or Galeazzo Visconti, can compel an unwilling people to change their deep-rooted habits and customs. He is always confronted with the risk of revolution. Nor has any State so far devised a machinery for controlling thoughts. In fact, none has gone as far as this. Finally, there are limitations imposed by the rules of International Law and by the Constitution of the State.

**What Sovereignty means now.** We have dealt with so many conflicting issues involved in the concept of sovereignty. These conflicting issues are essentially the creation of nineteenth century jurists and political theorists who created such a maze that it becomes difficult to extricate therefrom. The modern State is sovereign and it is now universally admitted that without sovereignty there can be no State. The sovereignty of the State is recognised, first, in a legal sovereign, which has *de jure*, that is from the standpoint of law, the final word of command and its authority, so far as law is concerned, is unlimited, absolute and supreme. With the establishment of the representative system of government, a second sovereign makes its appearance and is called the political sovereign. Although the political sovereign is not known to law and it remains indeterminate, yet the legal sovereign cannot brush aside what the political sovereign wills. It is the *ultima ratio* and to its authority the legal sovereign must ultimately bow, otherwise it endangers its own existence. In a period of political transition, some person or group in the community may become the centre of real or effective power, the actual or *de facto* sovereign. This sovereign may either destroy the other sovereigns, as General Ayub did in Pakistan, or else preserving them, as Hitler and Mussolini did in their countries, bind them to his will. If the *de facto* sovereign establishes his stability, his *de facto* sovereignty will become *de jure* sovereignty. Whatever be the nature of sovereignty, we use the term with reservations.

The reservations are obvious and they hinge upon two important facts. First, the State is not society nor is it regarded as *sui generis*, one of its kind. It is one like many other associations which compose society no doubt, but it is the result of human endeavours and aspirations. Its purpose is to uplift man and men. This gives to the State an independent status and eminent position in order to enable it to perform efficiently its functions of social regulation and adjustment. The authority of the State is, therefore, accepted and respected by all individuals and associations within it for what it does. Once this truth is realized the second fact flows from it. Since the State is not the engine of power, but service, the laws it makes are regulatory in nature than imperative in character. If the State continues to exist for the good life of man, naturally, it follows that "the test of a good law is whether it subserves the social purpose or not and whether it commands the willing allegiance of those whose interests it is made to promote." The Sociological Jurists even believe that law is anterior to or superior to the State. This belief directly challenges

the assertion that the State makes law or law is what sovereign wills. They uphold the sovereignty of law.

If we accept these two facts about the State and the nature of law, the term sovereignty assumes the role of authority. All recent schools of thought concede that much to the State. And it is more appropriate to recognise it, if collective security and international peace can be secured. The ultimate good of man and men cannot be cramped in the exclusiveness of the States. It must transcend their boundaries. But will the State as a matter of reality, whatever be the extent of its logic and conviction, drop the use of the term sovereignty? It is highly problematic in the context of the state of affairs in which we live and sovereignty still remains sovereignty; a reminder to its orthodox characteristics.

When all said, it cannot be denied that the recent political thought and a sharp swing towards internationalism has produced a big dent on the traditional theory of sovereignty. No State can remain oblivious for long of the public opinion no matter whether it is national or international. If the welfare of the individuals and their happiness have any meaning, it must find full expression in what the State does within its territories and in relation to other States. If it does not do so, it creates a split personality. Conflicting moral standards produce contradictions and maladjustments that cause violence, revolution, aggression and war. Laski has aptly said that "The notion of an independent sovereign State is, on the international side, fatal to the well-being of humanity. The way in which a State should live in relation to other States is clearly not a matter in which that State is entitled to be the sole judge. The common life of States is matter of common agreement between States." The growth of a sense of international solidarity has been marked during the course of the present century by the establishment, not merely of a vast network of inter-governmental bodies, but also of a series of international functional organizations and of a large number of voluntary international associations. International conferences on International Language, and World Government have become accepted and normal events. In fact, any problem which affects or is likely to affect the peace and security of the world is a matter of common concern and it is obligatory on all the States to adhere to the decisions emerging therefrom. Events in relation to North Korea, Iran, Cuba and the Suez adequately illustrate it and the external aspect of the sovereignty of the State must now be examined in this context.

It must, however, be remembered that the United Nations is merely an external and organisational device designed to solve international problems. "Organisations succeed only," as Acharya J. B. Kripalani says, "when the mind behind them is reformed".<sup>64</sup> In international affairs, too, reformation of the mind follows the most important rule of social conduct: "Do unto others as you would have others do unto you". If the nations adopt this simple rule of behaviour in their international transactions, sovereignty of the State in its traditional form stands modified.

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64. *The Future of the U.N.*, *The Illustrated Weekly of India*, Bombay, May 8, 1966, p. 12.



But here, too, it is essential that the Big Powers must play a beneficent role. It has also been suggested that "the absurd sanctity attached to domestic jurisdiction" should disappear from the Charter of the United Nations.<sup>65</sup> How far this suggestion is feasible, it is a matter of conjecture for the present.

### SUGGESTED READINGS

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|----------------------------------|---|
| Asirvatham, A. .                 | : <i>Political Theory</i> , Chap. X.                                      |
| Austin, J.                       | : <i>Lectures on Jurisprudence</i> , Vol. I, Lecture VI.                  |
| Barker, E.                       | : <i>Political Thought in England from Spencer to Today</i> , pp. 175-83. |
| Bryce, J.                        | : <i>Studies in History and Jurisprudence</i> , Vol. II.                  |
| Burgess, J. W.                   | : <i>Political Science and Comparative Constitutional Law</i> .           |
| Coker, R. W.                     | : <i>Recent Political Thought</i> , Chap. VIII.                           |
| Deacy, J. Q.                     | : <i>The State and Government</i> .                                       |
| Follett, M. P.                   | : <i>The New State</i> .  |
| Garner, J. W.                    | : <i>Political Science and Government</i> , Chaps. VIII-IX.               |
| Gilchrist, R. N.                 | : <i>Principles of Political Science</i> , Chap. V.                       |
| Hsiao, Kung Chun                 | : <i>Political Pluralism</i> (1927).                                      |
| Laski, H. J.                     | : <i>Authority in the Modern State</i> .                                  |
| Laski, H. J.                     | : <i>Grammar of Politics</i> , Chap. II.                                  |
| Laski, H. J.                     | : <i>The Problem of Sovereignty</i> .                                     |
| Maine, H. S.                     | : <i>Lectures on the Early History of Institutions</i> .                  |
| MacIver, R. M.                   | : <i>The Modern State</i> , Chaps. VI, VII, XV, XVI.                      |
| Maritain, J.                     | : <i>Man and the State</i> , Chap. II.                                    |
| Mattern, J.                      | : <i>Concepts of State, Sovereignty and International Law</i> .           |
| Merriam, C. E.                   | : <i>History of the Theory of Sovereignty Since Rousseau</i> .            |
| Merriam, C. E. and Barnes, H. E. | : <i>A History of Political Theories, Recent Times</i> , Chap. III.       |
| Rockow, L.                       | : <i>Contemporary Political Thought in England</i> , Chaps. VI-VIII.      |
| Ward, P. W.                      | : <i>Sovereignty</i> .  |

## Relation Between the Individual and the State

### RIGHTS AND DUTIES

**Meaning of Rights.** The history of political thought points to a persistent belief in men that States ought to guarantee to individuals the enjoyment of a certain number of basic human rights, which constitute the essential conditions of "the good life". Rights are those conditions of social life without which man cannot be at his best or give of his best, what is needful to the adequate development and expression of his personality. Looked at negatively, rights are those opportunities the absence of which deprive man of something essential. A man without rights, absolutely dependent on the daily caprice of a superior authority, is a slave. All doctrines of freedom, therefore, assume the existence of rights and Laski has aptly said that every "State is known by the rights that it maintains."

There are certain bare necessities without which man cannot live a life of his own. They are known as primary wants of life, and the higher needs of social life, for example, the need to have a family, the need to work in order to earn his living, the desire to live with his fellowmen, to express his opinion, and to share one another's weal and woe. Nature has, no doubt, given to man certain powers of action to satisfy his wants. But these powers are not devoid of reason. Power without discrimination and reason is another name for force. The basis of force is physical might, and might does not recognise rights. Use of might is not the way of common life, and a common life means a common good. The life of togetherness aiming at a common good demands that each man should exercise his powers of satisfying his wants rationally. He recognises that if he possesses the power to do a thing, so do others possess a similar power. He, accordingly, allows to others what he wishes for himself. Rights are, therefore, as Hobhouse puts it, "what we may expect from others, and others from us, and all genuine rights are conditions of social welfare. Thus, the rights anyone may claim are partly those which are essential to every man in order to be a rational human person, and partly those which are necessary for the fulfilment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities."

Life, according to Aristotle, is not merely living but living well. If good life is the aim of man's life, then, its pursuit and achievement involves fulfilment of certain conditions. It implies that every individual should be **conscious** of his own good and develop his powers of action to realise it. Secondly, he must be **conscious** of the good of others and help in creating those conditions which lead to the development of their powers of action. Consciousness of this fact, that individual good can be realised in common with the good of others, is the essence of rights. It is in this context that Laski defines rights as "those conditions of social life without which no man can seek, in general, to be himself at his best." A right thus understood is an essential condition of the individual's self-development, as it is also a condition of social welfare. In the words of Bosanquet, "we have a right to the means that are necessary to the development of our lives in the direction of the highest good of the community of which we are a part." This right is recognised and sanctioned by society.

**No rights outside Society.** Two conclusions emerge from what has been said above. Firstly, rights are meaningless outside organised society because apart from communal life they are hopeless abstractions. If there is no society, there can be no rights. Robinson Crusoe had no rights in his lonely island. He was the master of all he surveyed. There could be no limit to his freedom or activities. Limit to freedom arises only when there are others to exercise similar freedom. It is only in society that man recognises the freedom of others while exercising his own freedom. Recognition of this fact is the basis of rights, for our rights are the duties of others towards us and their rights are our duties towards them. In the words of Hobhouse, "Rights and duties, then, are conditions of social welfare, or as we define such welfare, of a life of harmony to this welfare every member of the community stands in a double relation. He has his share in it. That is the sum of his rights. He has to contribute his share. That is the sum of his duty." It follows that rights must be compatible with a common good expressed in "a complex of rights and duties linking men to each other."

Another way of saying this is that every right has a corresponding obligation or duty. If I have a right to work and earn my living, it is my duty to recognise the same right in others and accede to them their right to work and earn their living. I can enjoy my rights only if I respect the rights of others. "He that will not perform functions cannot enjoy rights any more than he who will not work ought to enjoy work." My claim to rights comes from the fact that I share with others the pursuit of a common end and the common end is the good life of man and men. If I fail to perform my duty, it is for the State to see that I act as a moral unit of society. The State exists to maintain and co-ordinate the various claims of individuals.

Rights are, thus, claims that are socially recognised to make life happy, contented, harmonious and prosperous. They are prior to the

1. Laski, H., *A Grammar of Politics*, p. 91.

2. Hobhouse, L. T., *The Elements of Social Justice*, p. 34.

3. Laski, H., *A Grammar of Politics*, p. 95.



State as they fulfil the basic conditions of social life. The State does not create them. It only recognises, maintains and co-ordinates them so that all may realize the benefits of such rights and in case of violation may protect them. It is, therefore, the primary function of the State to ensure that all equally enjoy their rights and create those conditions without which man cannot develop the powers inherent in him. It involves equal opportunities for all. But it is necessary to define the basic rights and make them definite. When rights are formulated neither the State nor the individuals dare trespass them. They command sanctity.

All we have said above about rights may be summed up as follows:—

- (1) Rights arise in society. They are the result of the social nature of man. Without society there can be no rights.
- (2) Every right has a corresponding obligation. My right is your duty and your right is my duty. Rights and duties are the same thing looked at from the different points of view. They are two sides of a coin; they are correlatives and can never be separated. This has been beautifully expressed by one of the writers. He says, "Rights without duties are like men without shadows: they only exist in fairy tales."
- (3) Right is not a claim. A claim is selfish in nature as it affects the interests of a person or a number of persons. A right, on the other hand, aims at the good of all and it has a moral end to serve. When I assert my rights, I do a public duty, because I guarantee to others what I claim for myself.
- (4) It follows that rights must be compatible with common good. Society recognises only those rights which in the last resort are relative to some common end or moral good.
- (5) The State does not create rights. It simply maintains and co-ordinates those rights which are socially recognised. By giving such rights a legal sanction, the State ensures to every one the enjoyment of his rights.
- (6) Rights must be definite and hence the necessity to define them. Rights do not remain rights when every individual has his own separate claims.
- (7) Rights have a tendency to grow. They must be consistent to the needs of man and the needs of man always grow; they expand and so do rights.

### CLASSIFICATION OF RIGHTS

**Moral Rights.** Rights are broadly divided into moral and legal rights. A moral right is that which is based on the ethical code of morality of the people, that is, what we think *ought* to be our rights. It extends "over the field of conduct and refers to all those actions and forbearances which is our moral duty to perform." But a moral right is not supported by the laws of the State. Its sanction is the moral opinion of the community. If there is a breach of moral rights there is nothing legally to punish the recalcitrant. A wife has a strong **claim** to be kindly treated

by her husband. But she has no **right** to kind treatment as laws of the State cannot compel a man to be kind. A **claim** is called a **right** not because it is just, but because it has been recognised by the State and can be enforced by any legal process or through the courts. Whenever we talk of moral rights we mean claims which can be converted into rights only when they have been recognised by the State. Moral claims even when designated as moral rights still lack the force to be enforced. It is my moral duty to help the poor, the needy, and the sick because as a moral agent of society I must try to create conditions which may contribute to the social good. But if I fail in my moral duty, laws of the State do not take cognisance of it. It must, however, be remembered that a moral right has a moral reference with it. It is recognised and sanctioned by society. What is recognised and sanctioned by society must be sanctioned by the laws of the State. In fact, no State, if it really does serve its purpose, can long afford to ignore things which are sanctioned by society. If it does, the citizens have a moral right to revolt against the authority of the State. History tells us that great reformers and leaders of the community had to battle against unjust laws and traditions in order to lift men to a higher moral level. Gandhi's mission in life was to moralise man and society and throughout his political career, first in Africa and then in India, he stood arrayed against tyranny of any kind, whether that tyranny was that of the State or society or of the individual.

**Legal Rights.** A legal right, on the other hand, is recognised and maintained by the laws of the State and is enforceable by a citizen in a court of law both against the government, and other citizens. In simple words, legal rights are, what, in fact, are our rights. These rights are distinguishable from moral rights. Secondly, legal rights are uniform and open to all, irrespective of their caste, creed or culture. It must, however, be again emphasised that in a democratic State the government is sensitive to the pressure of public opinion and the legal and moral rights tend to harmonize and coalesce.

Legal rights are divided into (i) Civil Rights, and (ii) Political Rights.

**(i) Civil Rights.** Civil rights provide for the fulfilment of elementary conditions of social life, that is, rights which relate to the protection and enjoyment of life and property by the individuals. Without them civilised life is not possible and they are, therefore, regarded as essential to the free and progressive life of man. Their enjoyment is universally guaranteed, because "opportunities to all alike" is the principle determining civil rights. Civil rights include the right to life and freedom from arbitrary arrest, freedom to acquire and hold property, to speak and write for publication, to meet publicly, to form associations for peaceful ends, to make contracts, etc. A well-organised State must protect the civil rights of its people against encroachments of both the individuals or associations of individuals, and of the State itself.

**(ii) Political Rights.** Political rights are not enjoyed by the individual in his personal or private capacity, but in his capacity as a citizen and they entitle him in the legal expression and administration of the sovereign powers of the State. Political rights, accordingly, are the means by which an adult citizen is entitled, by the constitution and laws of the State, to participate in the Government of his country. They consist in

the right to vote and elect, the right to be elected, the right to hold public offices, and so on. In fact, it is through the exercise of political rights that democracy operates and functions, and, it is only a democratic constitution which confers these rights on the people.

But the classification between the civil and political rights is not strictly adhered to as there are certain rights which fall in both categories. For example, it is now generally recognised that the right to vote should belong to all adults, men and women. Then, certain rights such as freedom of speech and assembly are often regarded as being at once civil and political rights. Both civil and political rights aim to provide equal opportunities to all and, hence, the distinction between the two becomes hazy. Yet, this two-fold division has an important historical significance. Civil rights have existed and can exist even in those countries where political rights have been denied to the people. Political rights are the gifts of democracy and prerogatives of the citizens of a democratic State.

Democracy is of two kinds, direct and indirect. Where direct democracy is operative all the people enjoying political rights themselves participate in proposing laws and deciding on laws, and in appointing the officers of the government and ratifying their policies and actions. But direct democracy is not obtainable now except in some of the **Cantons** of Switzerland. It can only exist in small States with limited area and population. Large States with huge population have a system of indirect or representative democracy where citizens in possession of political rights elect their representatives and delegate to them the work of making laws and out of them those who can command their confidence and have the ability to lead others are entrusted with the work of the government. Some States having the apparatus of representative democracy have introduced some institutions of direct democracy, such as, the **referendum**, the **initiative** and the **recall**. The essence of a democratic government is that as many citizens as possible should share in the exercise of political rights, that there should be an equal opportunity for all citizens to be appointed to the highest offices in the government, and the laws of the State should represent the will of the majority of the people. The majority which controls the government must respect and defend minority rights.

Each State decides what persons shall possess political rights and the extent of such rights. Aliens are everywhere debarred from the exercise of political rights. Similarly, all States exclude minors, criminals, and lunatics from the right to vote. Some States deny it to women. The age of the adults enjoying political rights also varies from State to State. Obviously equal political rights for all are not possible. The State must organize its practical operations through the agency of its government efficiently and successfully and, accordingly, the right to participate in its affairs is given only to those citizens who possess the requisite mental and moral qualifications and unequivocally manifest, both in words and deeds, their loyalty and allegiance to the State of which they are citizens. The problem of the State, therefore, "in creating political rights is to secure an organization in which legal sovereignty will coincide as nearly as possible with political sovereignty, in which as many



persons as possible may possess political rights as nearly equal as possible without destroying the efficiency of government, and in general public opinion may be made into law without tyrannizing over those who hold different opinions." It means political rights must be exercised wisely and in a spirit of devoted service.

### THE STATE AND CITIZENSHIP

**The concept of Citizenship.** The concept of citizenship goes back to the ancient Greek City-State of Athens where the population was divided into two distinct classes, the citizens and the slaves. The citizens who just comprised 20,000 of the entire population enjoyed both civil and political rights and they directly and actively co-operated in all the functions of the civil and military life of their State. A citizen was normally a soldier, a judge and a member of the governing assembly and all his public duties he performed not through a deputy but in person. The slaves, whose number was far in excess of the citizens, had none of such rights and they suffered from all kinds of political and economic disabilities. Even the wisest of the Greeks regarded slavery as a natural institution and Aristotle considered it essential for citizenship and human progress. The slaves, in brief, were not entitled to the privileges of a citizen.

Much the same position continued in ancient Rome or in the European medieval free-cities, except that in the latter serfs took the place of the slaves. But the French Revolution, with the twin principles of equality and fraternity as its slogan, brought in a phenomenal change in the concept of citizenship. The brotherhood of man was its basis and all people, it was claimed, stood equal in the common fraternity. It was the advent of democracy and immediately after the French Revolution the concept of citizenship extended to the entire population of the State. All enjoyed equal rights and privileges without any barriers of class distinctions as in the Greek City-State. It is true that the participation of all the citizens of the State in its public affairs could not be accomplished till the twentieth century was not well advanced and even today all the States do not confer identical political rights on their citizens, but adult suffrage is the maxim of democracy. By adult suffrage is meant every citizen, male and female, who is not a minor, lunatic or criminal, enjoys the right to vote and offers himself or herself for election for any office in the State. Aliens are excluded from the enjoyment of this right everywhere.

Political rights are, therefore, the privilege and prerogative of the citizens of a democratic State. A citizen may, thus, be defined an inhabitant of the State who is in possession of both civil and political rights and renders service to the State or, to put it in the words of Laski, makes the "contribution of one's instructed judgment to public good." To express it in another way, a citizen enjoys rights and owes duties to the State, which, *inter alia*, include defence of the State, maintenance of its unity and integrity, and promotion of the general well-being and progress of his fellow-citizens. He may even be called upon to sacrifice all what he has and what he can claim to possess, including his life, at the hour of the need of the State.

**Aliens and Citizens.** An alien is not a citizen of the State in which he resides. He merely lives in another State and owes allegiance to the State of which he is a citizen. In other words, an alien, who owes allegiance to another State and whose loyalty and sympathy belong to a foreign country is denied the enjoyment of political rights, and the laws of the State in which he temporarily resides do not permit him to participate in the politics of that country. Logically, it follows that if an alien has no rights, he owes no duties to the State in which he resides. He, no doubt, enjoys civil rights or most of them, obeys the laws of the State and pays all the taxes which the State may impose under law, but he owes no duties to that State. Some States, as the Union of South Africa, subject aliens to various kinds of disabilities and may even debar them from owning property. In the United States, Canada and Australia, their Immigration Laws regulate the entry of the people of Asiatic origin. If not precisely similar, Britain, too, has recently regulated by law the entry of Indians, Pakistanis and nationals of some other countries who are members of the Commonwealth of Nations. When the country is on war, restrictions on aliens become pretty stringent, particularly on the nationals of the belligerent countries, who are called "enemy aliens" as distinguished from "friendly aliens", that is, citizens of States that are not at war.

**Kinds of Citizenship.** Citizenship is of two kinds, natural and naturalised. Natural citizenship is governed by the principles of *Jus Sanguinis* and *Jus Soli* or *Jus Loci*. According to the principle of *Jus Sanguinis* blood or descent determines citizenship. A child follows the nationality of his parents or one of them regardless of the place of birth. But all States do not follow this principle of *Jus Sanguinis*. Some follow the principle of *Jus Soli*. A child born in the State, where this principle is followed, becomes the natural citizen of that State regardless of the citizenship of the parents. It is, accordingly, the place of birth alone which determines citizenship. The principle of *Jus Sanguinis* is older than the principle of *Jus Soli*. It was first incorporated into the Roman Law. The principle of *Jus Soli* appeared at a later stage in response to the feudal theory of territorial sovereignty.

Majority of the States follow the principle of *Jus Sanguinis* as the basis of natural citizenship. There are, however, some States, for instance, India, Britain and the United States of America, which follow both the principles of *Jus Sanguinis* and *Jus Soli*. In these countries children born of citizen-parents become natural citizens whether born within the State or abroad. If born within the State, it is governed by the principle of *Jus Soli*, and if born in some other State the principle of *Jus Sanguinis* is the basis to determine their natural citizenship. Since there is no uniform principle followed by the States in determining natural citizenship very often children acquire double citizenship at the same time. For instance, a child born of Indian parents on a visit to France acquires the natural citizenship of the country in which he is born in accordance with the principle of *Jus Soli* as well as that of India according to the principle of *Jus Sanguinis*. But on attaining the age of majority, he is free to retain the citizenship of the State of his choice and relinquish that of the other. One cannot be a citizen of two States at the same time.

**Acquisition and Loss of Citizenship.** Citizenship can also be acquir-

ed by an alien and it is called naturalised citizenship. Modern States differ widely in their attitude toward admitting aliens to citizenship by formal grant or naturalization. Citizenship conferred by this process "is gratuitous concession" on the part of State to which naturalization is sought and, accordingly, it may be granted under prescribed conditions or may be refused for any reason which the State considers expedient. In some States, the process is made easy and resident aliens are encouraged to acquire citizenship; in others the process is so difficult as to discourage the admission of new citizens. There are, however, some rules which are of usual practice.

The first is the rule of residence. All States prescribe a minimum period of alien's residence in the State. In Britain and the United States it is five years whereas in France the period is ten years. In Japan the requirement of minimum period of residence is waived if an alien married to a Japanese woman applies for naturalization. Secondly, an alien desiring naturalization is required to make a declaration on the prescribed form of his intention to that effect. Thirdly, he must renounce his previous citizenship and take an oath of allegiance to the State of which he intends to become a naturalized citizen. Some States insist on the testimony of his good moral character, and that he should be solvent and financially sound to support himself. Some States require that the applicant should possess working knowledge of the national language of the State.<sup>5</sup> Some States have imposed definite restrictions on the admission of persons of Asiatic origin or of certain races.

With the acquisition of naturalization the citizenship of the parent State is lost. When a woman marries an alien she loses the citizenship of her own State and acquires the citizenship of her husband's State. A person who enters into the service of another State and takes the oath of his office and allegiance to that State, he loses the citizenship of his original State. The laws of some States prescribe loss of citizenship of persons found guilty of heinous crimes, as treason and desertion from the army. But the common cause of loss of citizenship is **ex-patriation**, that is, relinquishment of citizenship. If a person naturalised in a State decides to again acquire the citizenship of his parent State and regains it, it is called **repatriation**. **Repatriation** may be voluntary or forced. If the State compulsorily repatriates a person from the State of his naturalization, it is forced **repatriation**. If it is of one's own accord, it is voluntary.

### THEORIES OF RIGHTS

Various explanations of rights have been offered from time to time, but we consider only the following important theories:

1. The Theory of Natural Rights.
2. The Legal Theory of Rights.
3. The Historical Theory of Rights.
4. The Idealistic Theory of Rights.
5. The Social Welfare Theory of Rights.

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5. In India an adequate knowledge of one of the Indian languages mentioned in the VIII Schedule of the Constitution is required.



**The Theory of Natural Rights.** The doctrine of Natural Rights is simple in explanation. It aims to emphasise that certain rights are so essential to any real personal life that they should be called "Natural". This idea rests on a belief in "Nature", as the original creating force which gave to every man the powers of finding by reason the right principles on which to organise his life. These principles, it is claimed, are based upon the universal law, the law of nature, and are common to all people in all countries. They are the product of the human nature.

The concept of Natural Rights originated in ancient Rome and came from the discovery that men of all races and countries living under Roman rule seemed to have some common rules of life, some objective standards of right and wrong given to them by the mere fact of their being men with human nature. This body of principles common to all men, the Romans called "Natural Law" and they based on it a considerable part of their legislation. Their principle of Natural Law finds its best explanation in the words of Cicero and therefrom flows the doctrine of Natural Rights. He said, "The existence of a universal and world-wide law, which is one with reason both in nature and human nature, and which accordingly knits together in a common social bond every being that possesses reason, whether God or man. The principle of natural law becomes a recognition of intrinsic worth in human personality, with the necessary implication of equality and universal brotherhood." The Natural Law is, therefore, the law of reason and is of universal application. It binds the people together in a common social bond by recognising the intrinsic worth in human personality. For the real personal life equality and universal brotherhood are the two pre-requisites.

In the Middle Ages Natural Law was identified with the Law of God and of the Church and it did no longer remain the assertion of the rights of man till it was revived in the seventeenth and eighteenth centuries. Locke was the first to restate it in purely philosophical terms and he made it the source of political obligation. He assumed that certain rights were "natural" and, indeed, believed that the rights which the social contract was designed to protect were both natural to man and approved by God. "The Law of Nature", he says, "stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions must, as well as their own and other men's actions, be conformable to the Law of Nature—i.e., to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it." He also held that "the state of nature has a law of nature to govern it, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent no one to harm another in his life, health, liberty or possessions." The need for a civil society was felt, according to Locke, because of the presence of certain inconveniences in the state of nature and men agreed to transfer some of the rights in order to safeguard the remaining natural rights, life, liberty and property.

Locke's teachings had profound effect on the Americans and the French, the former seeking to justify their struggle for independence and freedom from foreign control, and the latter seeking to justify revolt

against the arbitrary rule. The American Declaration of the Rights of Man stated, "We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of those ends, it is the right of the people to alter or abolish it." Thirteen years later, the words of Jefferson echoed in the French National Assembly when it was declared that "the ignorance, the oblivion, or the contempt of the rights of man were the only causes of public misfortunes and of the corruption of governments." The Assembly resolved "to state in a solemn declaration the natural, inalienable and sacred rights of man", which were equality in rights, liberty, property, security and resistance to oppression, together with the fact that sovereignty resides in the people.

These declarations gave a new emphasis to the doctrine of Natural Rights. While recognising the natural equality of men, they based consent as the only just basis for political obligations and set a norm for a free society wherein the happiness of man and his value of life would be universally revered. They also extended a promise to mankind, as Abraham Lincoln put it, "that in due time the weight shall be lifted from the shoulders of men, and that all should be given an equal chance" to determine their destiny. The later statements on Natural Rights drew their inspiration from these historic declarations of the Rights of Man.

The Sociological School, during recent times, has given a new meaning to the theory of natural rights. They reject completely the notion that natural rights are those which belonged to man in primitive society and that he brought them with him when the State was established. Natural rights, they maintain, are those immunities and freedoms of man which are conducive to the most effective functioning and rapid development of the social organism. What is natural must be in harmony with the essential conditions of existence and development of man. Natural rights, according to Professor Giddings, "are socially necessary forms of right, enforced by natural selection in the sphere of social relations; and in the long run there can be neither legal nor moral rights that are not grounded in natural rights as thus defined."

The doctrine of natural rights has been subjected to severe criticism. The term 'natural' has been given a variety of meaning and the concept of natural rights has, accordingly, varied with these interpretations. Since the term 'natural' is used without any precise meaning, there is, therefore, no common list of natural rights which may be acceptable to all the advocates of the theory. For example, there is no unanimity of opinion, even in our own times, whether men and women are by nature equal. A British writer has claimed that "six months" scrutiny of a correspondence column revealed a natural right to a living wage, a right to work, a right to trial by jury, a right to buy cigarettes after eight p.m., a right to camp in a caravan by the road side, and a right to walk on the grouse moors of Scotland during the close season."<sup>6</sup> Then, rights

6. As quoted by J. D. Mahbott, *The State and the Citizen*, p. 58.

cannot be independent of society and unless they are recognised and upheld by the State there is no substance in them. The theory of the Contractualists that rights are pre-social or pre-political is untenable. Complete freedom for everyone is a political impossibility. Nature gives to individuals certain powers. These powers are not rights. They become rights when opportunity is given for their proper development and the State provides all such opportunities. Finally, there can be no inherent natural rights that are absolute under all conditions. Rights change with time and place and they do according to the prevailing belief as to what is right and just.

If by natural rights we mean the enjoyment of those rights which are inherently for the good of man and which tend to create conditions necessary to lead a happy and full life and ensure the realization of his potentialities as a human being, we agree with it and citizens must be guaranteed such freedoms. The State which does not guarantee these basic rights denies to its citizens the very end for which it exists. Laski has aptly said that "Every state is known by the rights it maintains. Our method of judging its character lies, above all, in the contribution that it makes to the substance of man's happiness." That there are certain basic rights, universal in nature, has been recognised by the Charter of the United Nations. The Charter has, indeed, so much faith in the existence and reality of such rights that the clause about the promotion and encouragement of human rights and fundamental freedoms occurs five times in the Charter. The Universal Declaration of Human Rights, passed and proclaimed by the Assembly of the United Nations on December 10, 1948, lays down a minimum standard of human rights, based on "the inherent dignity" and the "equal and inalienable rights of all members of the human family." It affirms that all human beings ought to be treated as equals, and as having a fundamental right to individual liberty.

The efforts of the Commission on Human Rights appointed by the United Nations Economic and Social Council places the doctrine of rights on a broader basis than the individual state and laws. But in practice, a number of states which approved the Universal Declaration of Human Rights interpret very differently their common undertaking "to strive by teaching and education to promote respect for these rights and freedoms and, by progressive measures, national and international, to secure their universal and effective recognition and observance." Russia refused to sign it, obviously for the reason that she does not believe in the principles of individual liberty as the majority of the members of the United Nations understand them. There are differences of practice, however, among the signatories too. "Americans would no doubt consider that the class distinctions which exist in Great Britain infringed the principle of equality, whereas the British and Americans could both be charged with infringements of the principle of equality between races." General Ayub's Martial Law regime in Pakistan suspended all basic freedoms set forth in the Declaration and a complaint to this effect was made in a communication by the Chairman of the International League for the



Rights of Man to the Secretary General of the United Nations.<sup>8</sup>

**The Legal Theory of Rights.** According to the Legal Theory of Rights there are no rights which inhere in man; they are created and maintained by the State. The State formulates or defines rights, restricts their scope and provides guarantees for their enjoyment. Since the State is the source of all rights, there can be no rights without or against the State. To have rights against the State is tantamount to saying that the individual has no rights at all.

Such a theory of rights is not acceptable to the Pluralists and many others. Laski says that the State does not create rights, it only recognises them. Nor is it true, he says, that an individual has no rights against the State. The State must observe the rights of man and "it must give him those conditions without which he cannot be that best self that he may be."<sup>9</sup> It is not merely as a member of the State that the individual has rights. The State is one like various other associations of which he is a member and all collectively create opportunities for him and contribute to his welfare. "Wherever men are banded together to perform a task that is part of the common welfare the body so formed has rights as real, and as compelling, as the rights of the State."<sup>10</sup> To limit the rights of man because of his membership of the State alone "is to destroy his personality and not to preserve it."<sup>11</sup> A system of rights derived purely from law cannot be permanent. It implies that law is not the only source of rights. The real source of rights is our conception of right and wrong. "Rights," according to Plamenatz, "must have a foundation of right as against wrong." There is no security or civilised life if rights depend on the whims of the State and for that matter on the government. Laski even says that in the interest of the common good, it sometimes becomes the duty of the citizen to resist the State if it attempts to frustrate his rights. Any system of rights, as he puts it, must harmonise the three aspects of life. It must take into consideration the ideal claims of the individual for the common good; it must take cognisance of the reality of the claims of the association; and it must not be oblivious of the claims of the community on its constituent elements.<sup>12</sup>

The arguments referred to above are quite convincing. The Legal Theory does not give us a satisfactory explanation of rights. But all that the advocates of the legal theory say cannot be brushed aside. Rights which are not supported by the laws of the State remain only claims. Barker has, therefore, correctly said that the State is the immediate source of rights. No State can for long overlook the claims which are deemed essential for the moral development of man. Once these claims are recognized they become rights. Thomas Paine, a devoted champion of natural rights, maintained that every civil right grows out of a natural right, and natural rights, he defined, "are those which

8. *The Sunday Tribune*, Ambala Cantt., December 14, 1958, p. 1.

9. Laski, H. *A Grammar of Politics*, p. 93.

10. *Ibid.*, p. 92.

11. *Ibid.*

12. *Ibid.*, p. 141.

appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others."<sup>13</sup> The essence of Paine's observation is that the representatives of the people should endeavour to win legal recognition for all our rights which have a moral basis. It is in this context that Laski made his classic statement that "Every State is known by the rights that it maintains." A right has, thus, both a moral and legal reference. "A typical right," as Bosenquet affirmed, "unites the two sides. It both is and ought to be, capable of being enforced at law."

**The Historical Theory of Rights.** The Historical Theory of Rights emphasizes that rights are the product of history. They have their origin in customs which once found practical social utility and passed on from one generation to another ultimately having been recognised as inherent claims or rights. Ritchie says that "those rights which people think they ought to have are just those rights which they have been accustomed to have, or which they have a tradition (whether true or false) of having once possessed. Custom is primitive law." In explaining natural rights, advocates of the historical theory maintain, that custom is their sanction. They are considered fundamental to the development of man, because they have been maintained by a long unbroken custom and the generations have habitually followed them. Habits are 'natural' as they grow. They are neither instituted nor are they invented.

Burke maintains that the French Revolution was based on the abstract rights of man whereas the English Revolution was based on the customary rights of the people of that country. There is much truth in what Burke says. The French Revolution itself was the result of the conditions that prevailed in the country, but its slogan was liberty, equality and fraternity, the three abstract principles of universal application. The Glorious Revolution, on the other hand, was simply a re-assertion of the historic liberties of the Englishmen which was their heritage since the days of the Anglo-Saxons, and had found due expression in the Magna Carta, the Petition of Rights, and various other documents of constitutional importance.

There is much truth in the Historical Theory of rights and many of our rights really find their origin in the primitive customs. It does not, however, mean that the origin of all rights can be traced in customs and traditions. When rights are rigidly tied to customs alone, we altogether ignore the dynamic nature of society and, accordingly, the changing contents of rights. Rights change with the facts of time and place. History, as such, is not the only basis of rights and customs do not provide an absolute right or standard.

**The Idealistic Theory of Rights.** The Idealistic Theory of Rights is also designated as the personality theory. According to this theory rights are the external conditions essential to man's internal and real development. Krause, accordingly, describes the system of rights "as the organic

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13. *Rights of Man*, pp. 32-34.

whole of the outward conditions necessary to the rational life. Similarly, Henrici defines a right as "that which is really necessary to the maintenance of material conditions essential to the existence and perfection of human personality." In brief, the Idealistic Theory emphasises the creation of those conditions which help man to reach to the fullest stature of his personality. Perfection of human personality is the end to which all rights are directed and subordinated to. In other words, right to personality is man's fundamental right and all other rights are derived from it. For example, the right to life, the right to liberty, the right to property, and all other similarly important rights are to be judged by their contribution towards the development of human personality. If I abuse any of these rights and retard my self-development, society is within its competence to deprive me of that right.

This explanation of rights discloses three important facts to which a reference has been made in the earlier part of this Chapter. The first is, that rights arise in society. As they arise in society they are inherent in the nature of man, and the inherent nature of man is to will his own good. To will his own good implies the good of others since isolated good of the individual is not possible. Secondly, every right has a corresponding obligation, i.e., my right to self-development should not interfere with the right of development of others. Finally, individual rights are subordinated to the fundamental right of man's perfection. The society should see that the enjoyment of my rights helps me to attain the perfection of my personality. If any one of these rights does not help me towards reaching that end, society can deprive me from the enjoyment of that right. To sum up, my right of self-development is a similar right of self-development for others with whom I live an associated life. Personality is itself an element in the common good. Personality stands for "the fulfilment of man's vocation as a moral being" and rights are the means for the personal development or self-realisation. It is in this context that Laski says, "rights, in fact, are those conditions of social life without which no man can seek, in general, to be himself at his best." The system of rights is an organic whole which is moral in nature and helps to uplift the stature of man and society simultaneously.

Gandhi dedicated himself to the uplift of man and society simultaneously. He was out to moralise man and society. True morality, said Gandhi, must manifest itself in every action of the individual and also as a member of society. Both act and react upon each other. Gandhian outlook may be reduced to a simple formula: "If you have to reform yourself you must do so while reforming society." This is also the essence of the Idealistic Theory of Rights.

The Idealistic Theory of rights appeals to the moral and democratic mind of man, as it relates rights to morality rather than legality. Secondly, it does not subordinate the self-development of man to the social whole. Both act and react upon each other. The theory believes with Kant that no man is to be treated as a means to another's end; "it calls upon everybody to treat humanity in his own person and in the persons of others always as an end and never merely as a means." But the real difficulty arises in fixing the standards of moral freedom. What should be the conditions necessary for each individual for his fullest self-development? According to Gandhi it is the pursuit of truth and non-violence. But are



these conditions of universal acceptance? Mankind has still to show much about it. Then, how individual good and social good are to be reconciled in case there is conflict between the two?

**The Social Welfare Theory of Rights.** The advocates of the Social Welfare Theory hold that rights are conditions of social welfare. They are the creations of society, and, therefore, law, customs, traditions and the natural rights "should all yield to what is socially useful or socially desirable." What is socially useful should have for its test the greatest happiness of the greatest number. Take for example the right to speech. It is not an absolute right. It is limited by the social needs of a co-ordinate body. Similarly, the right to property does not mean the right of the few to prosper at the cost of the many.

The Utilitarians, Bentham and Mill, are the real exponents of the Social Welfare Theory of Rights. They set up the principle of the greatest happiness of the greatest number and made it the criterion of utility. But utility, they believed, should be determined by considerations of reason and experience. Laski, too, accepts utility as the basis of rights, though he gives to the term a meaning which is consistent with the modified conditions of his times. He holds that the test of a right is utility, and the utility of a right is its value to all the members of the State.<sup>14</sup> The claims, he says, which the State must recognise "are those which in the light of history, involve disaster when they are unfulfilled." Rights are not independent of society, but inherent in it. "We have them...for its protection as well as our own...Rights, therefore, are correlative with functions." We have rights so that we may contribute to the common good. My rights are, accordingly, built upon my contribution to the well-being of society. "I cannot have rights against the public welfare, for that, ultimately, is to give me rights against a welfare which is intimately and inseparably associated with my own."<sup>15</sup> Rights, as such, are built upon their utility to the individual and the community.

The Social Welfare Theory of Rights has much to commend. But one cannot say what social welfare actually means. Does it mean the greatest happiness of the greatest number, majority interest, or what it is today understood to be the common good? In fact, much political wrong has been done, during recent times, to the individuality of man in the name of social good. The individuality of man and his rights have very often been sacrificed in order to extol social good in the name of social expediency: A social system which discounts individual personality and glorifies common interest of society cannot continue for long. It is sure to provoke opposition from that section of society whose personality is crushed and their rights frustrated.

**Conclusion.** A combination of the Idealistic Theory and the Social Welfare theory is the best explanation of the nature of rights. Individual good and social good go together. There can be no divorce between the two. Society is an organic unity, parts depend upon the whole and the whole depends upon the parts. Welfare of the community is built

14. Laski, H., *A Grammar of Politics*, p. 92.

15. *Ibid.*, p. 96.

upon the welfare of the individual. Let both rise simultaneously. And when both rise simultaneously, they rise towards a moral stature. It means the regeneration of both the individual and society. A moral man makes a moral society and moral society means a moral man. One cannot be without the other.

### FUNDAMENTAL RIGHTS

**The Bill of Rights.** Rights, as we said before, are relative. They are limited by the rights of others and by considerations of social good. They also change with time and place. But there are certain basic rights which the civilised communities guarantee in normal times, because they are deemed fundamental to the existence and growth of man, and together with it of society. Without them life is sordid and meaningless. The tendency in a modern democratic State is to incorporate such basic rights in its Constitution so as to ensure their full enjoyment by all citizens without discrimination of any kind. A democratic government is, no doubt, representative, but the representative government is a government by the majority party and it is possible that either as a result of political rivalry or by yielding to passion it may curtail the cherished rights of the minority party or parties. In order to withdraw fundamental rights from the pitch of political controversy and to place them beyond the reach of majorities and officials they are embodied in the Constitution and given special sanctity. Their inclusion in the Constitution is a declaration of the fact that certain elementary rights of the individual are inviolable under all conditions and the shifting majorities in the legislature of the country should not be able to tamper with them. If they do, redress can be found in the courts of law. Courts become the custodian of fundamental rights.

A Bill of Rights, therefore, is a declaration of fundamental rights. It is a mechanism for the safeguarding of basic freedoms and may be defined as "a series of rules generally embodied in a written constitution setting forth the fundamental civil and political rights of the citizens and imposing certain limitations on the powers of the ordinary government, as a means of securing the enjoyment of those rights." They are enshrined in the constitution to give them sanctity and special force. They cannot be invaded arbitrarily either by the legislature or the executive or any other authority. If they do, it is the duty of the courts to intervene and ensure the due observance of fundamental rights. In *Hurtado v. People of California*, Mr. Justice Mathews of the Supreme Court of U.S.A., declared: "The limitations imposed by constitutional law upon the actions of Government, both State and national, are essential to the preservation of public and private rights notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of public authority, even when acting in the name and wielding the force of government." Constitution is, then, a check upon the encroachments against the majority and judiciary is the unfailing guardian of the Constitution. President Taft, of the United States, remarked that constitutional safe-

guards "are the self-imposed restraints of a whole people upon a majority of them to secure sober action and a respect of the rights of the minority.... In order to maintain the rights of the minority and the individual and to preserve our constitutional balance, we must have judges with courage to decide against the majority when justice and law require."

But in actual practice, the safeguards afforded by a written constitution for securing fundamental rights are not so straightforward as they might appear. Many of the rights accepted fundamental at one time may become obsolete after some time. The obsolete rights continue to exist, because they are enshrined in the constitution and constitutional changes are not easy to make however great the need for such changes may be. Then, the constitution requires interpretation. The American system of judicial review discloses that it is a frail safeguard. The judges while giving decisions, and in whatever legal dress such decisions are clothed, render political decisions and that, too, with five to four majority.

All the same, no one can discount the political utility of the declaration of fundamental rights. It is true that fundamental safeguards alone do not ensure to a people the enjoyment of their basic liberties. But the guarantees for the fundamental rights, as embodied in the Constitution, are a visible expression of the nation's faith in the worth and value of man. They create a free atmosphere for the individual to rise to the full height of his power. It is also an attempt to circumscribe the powers so that human freedom may not be subordinated to governmental functions. The powers and functions of government are so reconciled with the freedom of man that each may have the largest freedom consistent with the demands of the social order. The Bill of Rights withdraws certain subjects from the vicissitudes of political controversy and defends minority rights. Laski says, "Bills of rights are quite undoubtedly a check upon a possible excess of the government of day. They warn us that certain popular powers have had to be fought for, or may have to be fought for again.... It (Bill of Rights) acts as a rallying point in the State for all who care deeply for the ideal of freedom...." The Constitution of India contains a carefully chosen code of fundamental rights. There are, in this country, a score of minorities, and minorities of different kinds, both horizontally and vertically divided. The Chapter on Fundamental Rights is intended to forge unity out of the diversity by constitutionally securing the rights of the minorities rather than leave them to the whims of the shifting political majorities. Free societies must defend minority rights. Finally, a declaration of rights serves as an instrument of education. It provides a constant background for the political life of the people.

### SOME IMPORTANT CIVIL RIGHTS

All civilised States do not maintain an identical list of rights, although the tendency in modern times to make the extent of these rights as comprehensive as possible. In addition to the usual basic rights, many countries offer guarantees against economic insecurity and exploitation, opportunities for free education and many other social facilities. The kind of rights recognised and maintained by each State is, in fact, one of the ways in which States are recognised and differentiated.



Here are some of the important Civil Rights:

**Right to life and Security of Person.** Rights arise because of man and his social nature. Without man there can neither be the State nor rights. Human life would be nowhere if the sacredness of this claim is not accepted. The right to life is, therefore, the fundamental of all rights as it is the very core of humanity. It means a claim to so live as that one's existence does not jeopardise the existence of others. It also means the right to defend oneself against attack. If any one makes an attack upon my life, it is my right to defend myself and even to employ force for self-preservation. Use of force, however, is permitted only as an extreme measure.

Every State, however primitive its political organisation, must adequately provide for the personal safety of its citizens. In early societies the power to punish was private. The blood relations of the deceased avenged his death. The system of private revenge led to blood-feuds. But now every State takes away from individuals their rights of vengeance and substitutes in its place punishment as provided for in its laws. The right to life is, thus, safeguarded by law. Punishment is held the logical consequence of anti-social acts of those who violate law. Criminals are adequately punished as their acts disturb the moral order of society. According to Kant and Hegel punishment is the negative reward for crime. It is what the criminal deserves and the State simply gives him his due. The advocates of this point of view plead that punishment for a murder should be death.

The modern idea of punishment is entirely different. It is argued that punishment should be neither retributive nor deterrent in character. It should be reformative. The reformative theory aims at reforming the psychology of the criminal. "Instead of the murderer being hanged, modern penal law tends to regard him as one who must be removed from society for some time in order that he may reform and ultimately resume his place in society to contribute towards the welfare of society like all well-behaved citizens." Given necessary conditions, it is maintained, a Saul may become a Paul. Capital punishment, it is accordingly maintained, should be abolished and the system of jails should be substituted by reformatories.

The right to life also demands punishment of those who attempt to commit suicide. The reason is obvious. Every individual is an integral unit of society. If suicide is permitted, we deprive society of valuable lives who may contribute to its moral enrichment. Security to one's person cannot be claimed if individual is allowed to murder himself. Suicide is an attempt to disintegrate society and inflict on it a social injury. It must, therefore, be punished, as it cuts at the very root of human life.

But the right to life is not absolute. If the State guarantees to its citizens the security to life, the citizens, too, owe a duty to the State to maintain its integrity. During times of war or any other national emergency, it is the duty of all citizens to protect and uphold the sovereignty of the State even if they have to sacrifice their lives. Then, the right to life depends on obedience to laws. If laws are wilfully disobeyed there is neither certainty nor security. This means conditions of chaos and

disorder and both life and property cannot be assured under these conditions.

**Right to Liberty and Free Movement.** If the right to life is the basis of society, the right to liberty is the essence of human existence. Man has not simply to live, but to live well and living well means to live a moral, virtuous and happy life. Man has, thus, a moral vocation to perform or do his duty in the social life. This he can do only when he has complete freedom to exercise his faculties and to determine the general conditions of his life. It also implies that the movements of the individual should not be restricted by any arbitrary exercise of authority either by other individuals or by government. "Mere life without movement would be meaningless and without the exercise of human faculties it would not rise above the levels of that of animals."<sup>16</sup> Since the right to liberty and free movement arises from the fact that every man contributes something to the good of society, slavery, in any form, is the antithesis of liberty.

But unrestrained freedom is the negation of freedom as it means freedom for no one. True freedom is really limited by freedom, that is, my freedom is limited by the freedom of others so that all may equally use their potentialities for their own good as well as for the common good. Liberty, as such, involves certain 'fundamentals' which must be guaranteed to each individual and personal liberty is the foremost of all. The right to personal freedom means that no one may be wrongfully arrested or detained or coerced in any manner not prescribed by the laws of the State. Physical restraint is wrong unless the individual is accused of an offence and is tried in a court of law, or when after trial he is convicted. If personal freedom of a citizen is arbitrarily restricted by government, which allows to its citizen the right to free movement, then, there are two alternatives before him. He may, in the first place, apply to a court for a writ of *Habeas Corpus*. When the writ is issued the prisoner is produced before a Court which enquires into the causes of his arrest or detention and orders him to be set free if his arrest is held illegal. In the second place, the alleged accused person can seek redress for his arrest. Redress for arrest means that a person who has been wrongly arrested may sue the wrong-doer for damages or get him punished from a court of law.

The right to liberty and free movement is, however, not unlimited. A government may impose many restrictions on freedom of movement of the citizens during a period of war or at a time of national emergency.<sup>17</sup> War and other national emergencies demand that government should possess wide discretionary powers. These are, nevertheless, extraordinary

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16. Gilchrist, R. N., *Principles of Political Science*, p. 139.

17. The Constitution of United States does not specifically provide for any kind of emergency. In Britain there is no prerogative of the Crown to make a proclamation of emergency. Emergency powers are given to the executive by Parliament. In India determination of emergency rests with the President and the Constitution authorises him to suspend the operation of Fundamental Rights including the right to enforce them during the operation of the Proclamation of emergency. It was done immediately after the Chinese attack on India in October, 1962.

powers to be exercised for extraordinary purposes and resort to them should not be made in times of peace.

**The Right to Work.** The right to work is implicit in the right to life, because in a rationally organised society man must live on the reward of his labour. It is, accordingly, necessary that society should provide him with facilities to perform his functions, and earn his living in order to maintain his life. If the State fails to provide such an opportunity, it deprives him of all those means which make possible the realisation of his personality. A struggling and a starving man is a social decrepit. It is now being increasingly recognised that the modern State must guarantee the right of work to its citizens. But it does not mean the right to some particular work. If I become unemployed, I have not the right to be provided with an identical work. "The right to work can mean no more than the right to be occupied in some share of those goods and services" which society needs.<sup>18</sup>

The right to work, also, implies that the worker must be paid adequate wages for his labour. He should be able to get enough of food, clothing, and shelter including some comforts. If his wages are just sufficient to satisfy his bare necessities of life, he is liable to become a physical wreck. Human machinery requires proper greasing and oiling if it is to work efficiently. Comforts not only lubricate human machinery, but make life something more than a mean satisfaction of ugly wants. Then, the worker must work only for reasonable hours. Human labour is subject to physiological and psychological limitations. Long hours of work mean frustration of personality as the worker has no leisure for creative work. The thing that makes a man a citizen is thought. If he has no time to think, he loses the quality of a citizen. A good citizen means a good State. There is, then, a "civic limit" to the energy "the State can, for its own sake, permit him to expand."<sup>19</sup>

Few States outside Russia have legally recognised the right to work. But no State can any longer afford to ignore it. There are two alternatives before the State. It should either provide work for every citizen, or make some provision for his maintenance so long as he remains unemployed. Unemployment insurance is a solution for the second alternative. Similarly, the State should intervene and see that workers get adequate wages consistent with a decent standard of living and they are employed for reasonable hours of work, giving them ample leisure to develop their minds.

**The Right to Education.** The right to education means that the State should make adequate provision for educating its citizens. Education equips individuals with capacity to work and trains them in the art of citizenship. Citizenship has been defined "as the contribution of one's instructed judgment to the public good."<sup>20</sup> Education is, thus, an indispensable condition to free individual development and makes man fit for the tasks of citizenship. Laski says, "In the long run, power belongs to those who can formulate and grasp ideas."<sup>21</sup> An uneducated

18. Laski, H., *A Grammar of Politics*, p. 106.

19. *Ibid.*, p. 111.

20. *Ibid.*

21. *Ibid.*, p. 113.



individual can neither understand politics nor can he become vigilant about his interests. Such a citizen is bound to be the slave of others. He will not have the opportunity to rise to the full stature of his personality. "He will go through life a stunted being whose impulses have never been ordered by reason into creative experiment."<sup>22</sup> This means failure of democracy, for the people who are ultimate masters will not be able to exercise their franchise intelligently or perform their other civic duties satisfactorily. Hence the democratic slogan is: "Educate the masters." Apparently, the right to education is a civil right, but really, it is a political right as it safeguards them.

Right to education does not, however, mean an identical intellectual training for all citizens. It only means provision for that type of education which should give an equal opportunity to all citizens in that branch of knowledge for which they have an aptitude. Then, there should be a compulsory minimum level of education below which no one may fall, if he is to conform to the standard of a good citizen. Every citizen should have at least that much education as may enable him to weigh, judge, choose, and decide for himself. "He must be made to feel that this is a world in which he can by the use of his mind and will shape at once outline and substance."

**The Right to Property.** For life to be worth living and incentive for work, it has often been claimed, that every man should be free to use and enjoy his possessions, both movable and immovable. The right to property involves the right to exclusive use of one's property, the right to alienate it by gift or exchange during life, and the right to bequeath.

The right to property in recent times is being widely questioned. Various arguments are advanced for its abolition or retention. Those who favour its retention urge that property has an ethical basis and it is essential for the realisation of the moral end of man.<sup>23</sup> It is the reward for ability and, accordingly, it is necessary in some form for the existence of man, his growth and development. Locke held that "the supreme power cannot take from any man any part of his property without his own consent. For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property..."<sup>24</sup> It is also maintained that since the man of property is protected from fear of starvation, he can find adequate leisure to become an intellectual explorer and, thus, create those conditions which contribute to the progress of mankind. Finally, property nurses the virtues of patriotism, love of one's family, generosity, inventiveness, and energy—all so essential for the progressive development of society.

Those who advocate its abolition contend that equality is impossible if the right to property is allowed to continue in its present form. Inequality, they maintain, is the cause of all our social, economic, and political ills. Some writers, who oppose the institution of private property as current, however, justify its retention to the extent needed for

22. *Ibid.*, p. 114.

23. Gilchrist, R. N., *Principles of Political Science*, p. 141.

24. John Locke, *Second Treatise*, p. 138.

the development of human personality. For example, Laski is not altogether in favour of its abolition. But he does not concede the right to property which is not the result of one's own labour, or the possession of which is against the social good, or which is not necessary to his function in society.<sup>25</sup> He makes a clear distinction between **owning** and **earning** and holds: "Those whose property is the result of other man's efforts are parasitic upon society."<sup>26</sup>

Almost every State outside Russia recognises and guarantees the ownership of private property. It is only the right of personal property of citizens in Soviet Russia which is recognised and protected and it embraces their income from work and their savings, their dwelling houses and subsidiary household economy, their household furniture and utensils and articles of personal use and convenience.<sup>27</sup> But the attitude to property in all countries has now changed with the increasing emphasis on social rights. It is limited by the considerations of social justice and public welfare. If society does not create sufficient wealth to enable it to foot the bill of its expanding services, then it is obliged to take more of the income of the wealthy, in the form of taxes. The Government may even resort to the policy of nationalisation on the ground that social claims must supersede individual claims. Otherwise too, the right to property, like other civil rights, is not absolute. It is subject to limitations. The laws of every state regulate the ownership and transfer of private property. The Government may requisition houses, buildings, sites and factories for public purposes.

**The Right to Contract.** The right to contract means that every citizen may work, live and freely contract on a basis of equality with others and with the same opportunities as his fellows. Contract is, undoubtedly, the essential basis of society. It cements business and social organisation. The State which does not secure to its citizens the right to contract cannot claim to be civilized and, therefore, progressive. The Constitution of the United States of America prescribes that no State shall pass "any law impairing the obligation of contracts." A similar provision is made in the Constitution of India.

But there are certain kinds of contracts which the States do not recognise. No State recognises a contract concluded to deal in slaves or a contract involving bribes. Similarly, all contracts which are against public good, for example, contracts made for illegal purposes, immoral traffic, or contracts which endanger the safety of the State are regarded as void. Article 23(1) of the Constitution of India prohibits traffic in human beings. Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The State can, thus, support contracts only which are consistent with the end for which it exists.

**The Right to Speech and Press.** The right to speech is an elementary necessity of man. There can be no society unless its members are free to express their opinion and exchange their views without restraint.

25. Laski, H., *A Grammar of Politics*, Ch. V.

26. *Ibid.*, p. 184.

27. Article 10 of the Constitution of U.S.S.R.

It is only through the medium of speech that we benefit from the opinions and experiences of others. Society becomes stagnated without free expression of opinion. Speech is, also, a means of self-protection. When we are free to express our opinion, we can protest against the tyranny and injustice of others, whether it is the tyranny of government or of any individual person. The right to speech, therefore, "means freedom to express one's view of general subjects." It means that every individual is free to think and express his opinion in public without any interference by government. It implies that every individual should be free to criticise the policy pursued by the government. The freedom to think as you will, and to speak as you think are the only indispensable means to the discovery and spread of political truth.

"But truth alone is no index for freedom of speech," and, as such, the right to speech is also not absolute. The interests of social order and respect for the rights of others require restraints on liberty of expression. The laws of the State penalise utterances which tend to corrupt public morals, or defame individuals, incite people to crime, or which spread sedition and endanger the foundations of government established by law. Such restrictions on the right of speech are not intended to curtail individual liberty. They are imposed to ensure liberty of others and safeguard the stability of the State. There is some difference of opinion as to the right of speech during war. But it is generally admitted that every citizen must subject himself to greater restrictions during national emergency. Many things that might be said in time of peace may act as hindrance to war effort and tend to jeopardize the independence and sovereignty of the State. Utterances prejudicial to the safety of the State cannot, accordingly, be permitted so long as the emergency lasts. Laski, however, does not concede to government the authority to restrict speech even during war. He allows the people the right to express their opinion about the war policy of the government. "No executive," he says, "has a right to move on its own way, whatever the opinion of its citizens. Those opinions must be made known in order to affect its activities. To penalise them at a time when it is, above all, urgent to perform the task of citizenship is fatal to the moral foundation of the State."

Freedom of speech is a valuable right. Apart from its contribution as a means to the development of social progress, success of democracy depends upon the right to speech. Democracy is a government by criticism; clash of ideas and conflict of opinions. Out of this clash and conflict emerges the truth. Criticism of government policy creates an enlightened public opinion. It is, thus, a potent factor for the redress of public grievances.

"This is true liberty, when free-born men  
Having to advise the public, may speak free."

—Euripides.

When freedom of speech is allowed, government, too, possesses the means to benefit from the expression of views of the public. It is a barometer of public opinion and government which stifles public opinion prepares for its own destruction. Prof. Laski has beautifully summed up this point. He says, "To allow a man to say what he thinks is to give



his personality the only ultimate channel of full expression and his citizenship the only means of moral adequacy. To act otherwise is to favour those who support the *status quo*, and thus either drive the activities of men underground and, therefore, dangerous channel, or to suppress experience not less entitled than any other to interpret publicly its meaning."<sup>28</sup> But Laski also urges that the citizen has the right "to preach the complete inadequacy of the social order. He may demand its overthrow by armed revolution." He does not accept the argument of "reasons of State" and that the preaching of overthrow of government by armed revolution would mean anarchy in the State. He says, "It is no answer to this view to urge that it is coronation of disorder. If views which imply violence have a sufficient hold upon the State to disturb its foundations, there is something radically wrong with the habits of the State." It might be anarchy and, in fact, it is, but, he argues, it does not matter, for the peace in which injustice and tyranny go unquestioned is unworthy of human existence. This is an extreme view which no State can permit, not even an advanced democracy, and everywhere "reasonable restrictions" are imposed on the right to speech.

The right to press means the right to publish what a man can lawfully speak. This right follows, *ipso facto*, from the right to speech. It implies publication of news, ideas, opinions and criticisms subject to the limitations which are imposed on the freedom of speech. Press plays a very important part in disseminating news and views and, thus, helps to create enlightened public opinion. Milton has cogently said, "Give me the liberty to know, to utter and to argue freely, according to conscience above all liberties." A free press, therefore, is fearless and it is a very powerful and effective vehicle to ventilate popular grievances, to criticise the policies of government and the actions of its officials and, as such, a mighty check on the tendency of the government to interfere with the rights of the citizens. But the press does not serve as a valuable instrument of democracy when it is owned and controlled by the rich and is commercialized. "Democracy is a government by talk, but when 'money talks' democracy degenerates into plutocracy." It is, accordingly, essential for the success of democracy that free discussion and free criticism should flow from the press to help in shaping genuine and responsible public opinion.

**The Right to Assembly and Association.** The right to assembly and to form associations is implied in the right to speech. This right, too, is an elementary right of man. Associations, according to Gierke and Maitland, are instinctive to man. The Pluralists even regard the State as an association. But the claim that the State is an association is contested. Yet, there is no doubt that the individual can impress his views only by acting with his fellows, and there are so many objectives which he cannot achieve singly but only in association with others. It is, accordingly, necessary that citizens should be free to form associations and assemble very often to propagate their views. In all matters of public interest and policy they should be free to publicly discuss and express honest opinion. It also includes the right of petition and protest.

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28. Laski, H., *A Grammar of Politics*, pp. 118-19.

But the right to association is limited by the necessities of the State. So long as States preserve their sovereign national character, we cannot accept the proposition that the State is an association. It is a sovereign State and it must ensure its continued existence. If the object of any association is to overthrow the State, it cannot be allowed to exist. The State may declare an association or a public meeting unlawful, if a breach of peace or the security of the government established by a law is apprehended. The State may, also, prohibit an association which has become so powerful an engine of political strength as to endanger its existence.

**The 'Right to Religion and Conscience.** The Constitution of India states: "Subject to public order, morality and health...all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."<sup>29</sup> But the Constitution subjects the right to religion and conscience to two limitations. First, the right to religion and conscience does not preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, and secondly, for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.<sup>30</sup>

The right to religion and conscience gives every citizen the liberty of belief and worship. It means that everyone is free to profess and follow any religion and perform necessary rites connected with his religious practices. The State should have nothing to do with the religion of its citizens. It should be the private sanctuary of every individual. The State which recognizes this principle is called a secular State. The Republic of India is admittedly a secular State.

But the right to religious faith is not admitted by all the States. Some States permit only a certain type of religious faith, others do not permit unrestricted worship. Pakistan does not allow idol worship and Pakistan Government's conception of idolatry is so narrow that it refused permission to India's High Commissioner to place a wreath at Mahatma Gandhi's statue in Karachi on his first death anniversary. The modern State, however, accepts the principle of religious toleration. Nevertheless no State does permit worship which involves immorality. Nor can it allow any religious sect which endangers the existence of the State.

**The Right to Family.** We have discussed the importance of family in the evolution of the State. In the continuance of the State the family is its hope and the cradle of civilisation. The right to family is, therefore, the most elementary right and it implies the right to marriage, the right against others in maintaining the purity of marriage relations, the right to the custody and control of children, and the right of inheritance. But the right of marriage and other family rights are to be exercised with due regard to the good of the community. As Gilchrist says, "The family state is a condition of the good life," but whereas in property the right is exercised in a thing, in the family state it is exercised over

29. Article 25 (1), 13.

30. Article 25 (2) (a), (b).

a person or persons, which implies that the individual exercising family rights must recognize that the good of others is permanently and indefinitely bound up with his own good."<sup>31</sup> The State may, therefore, restrict the right to family, if it is being used in a manner which is opposed to general good. The Hindu Code Law regulates marriage and divorce and enforces certain obligations in the relations of husband and wife and of parents and of children. No State recognizes temporary marriage. Many may prohibit polygamy. The minor in every State has no legal status. A fixed age of majority is recognised by every State, though it varies from State to State.

**Right to Equality.** Right to equality means the absence of legal discrimination against any one individual, groups, class or race. In earlier times certain classes possessed special privileges or were judged by special law. The modern tendency is to enforce the same law over all persons in the State and to give all persons equal rights and privileges in the protection of their civil liberty. Democracy can only exist and flourish in a society of equals. The Constitution of India makes social and civil equality the bedrock of Indian polity. It guarantees equality of all persons before law,<sup>32</sup> prohibits discrimination on grounds of religion, race, caste, sex or place of birth as between citizens,<sup>33</sup> and abolishes untouchability<sup>34</sup> on the one hand and titles<sup>35</sup> on the other.

The concept of equality of all persons before law has a significant meaning and it is one of the ingredients of what Dicey calls the Rule of Law. The Rule of Law means three things with Dicey. It means, in the first place, the absolute supremacy of law. There should be nothing which may be characterised as arbitrary power and every action of government must be authorised by law. Then, there should be supremacy of law and no one may be punished except for definite breach of law which must be proved in a duly constituted court of law. Thirdly, it means equality before the law, i.e., every citizen is subject to the ordinary law of the land and has to stand his trial in the same law courts, whatever his status or position in society. The Rule of Law is, therefore, no respecter of persons. It is not 'a rule of men', but a measure of liberty enjoyed by the people. Law should neither be arbitrary nor should it guarantee privilege and should not take account of privilege. Rich and poor, high and low must be equals before the law. But judiciary must be independent and impartial if the Rule of Law can mean anything real.

### POLITICAL RIGHTS

Political rights are possessed by those persons whom the State permits to share in the legal expression and administration of its sovereign power. They give an equal opportunity to the individual, if he is worthy of it, to take part in the political affairs of his community and influence

31. Gilchrist, R. N., *Principles of Political Science*, p. 150.

32. Article 94.

33. Article 15.

34. Article 17.

35. Article 18.



the policy of his government. Political rights consist in: (1) the right to vote, (2) the right to be elected and represent the people, (3) the right to hold public offices, (4) the right to petition for redress of grievances, and (5) the right of criticising the government.

**The Right to Vote.** By the right to vote we mean that every adult citizen has the right to express his opinion by casting a vote at the time of election what persons he desires should undertake the task of government. The right to vote is the product of democracy. But even a democratic government does not grant this right to every citizen. Aliens, bankrupts, paupers, certain criminals and minors are often denied the right to vote. Some States deprive their women population of this right. But neither sex nor property, neither race nor creed, neither religion nor education should be the criterion for the grant of the right to vote. "Whenever," Laski says, "the body of voters is limited, the welfare realised usually excludes that of the persons-excluded."<sup>36</sup> To allow owners of property alone to possess the right to franchise is undemocratic and it has proved disastrous to the interests of those who do not own property. Similarly, limiting the right to vote to a certain caste, creed, colour or sex has meant creation of special privileges for that class alone. Even Mill's argument that education should be the criterion of the right to vote has no popular appeal. The right to education, as said before, is now regarded as one of the important basic rights and all democratic countries have either made, or are endeavouring to make at least primary education free and compulsory. It is contended that the right to vote should be as wide as possible and one man, one vote, ought to be the maxim of a democratic government. "Popular control means that all adults share the political power; to say people are in law politically equal means at least that each adult has the vote. The suffrage is thus one criterion of democracy; to the extent that the suffrage is less than universal, to that extent the system is less democratic, less under popular control."<sup>37</sup>

**The Right to be Elected.** The right to be elected or to represent the people is another important political right. In fact, the right to vote and the right to be elected as a representative are twin-born and are essentially necessary for a democratic government. The responsibilities of representatives are enormous and difficult, because they make laws, control and determine the national expenditure and revenues, and in a parliamentary democracy control the executive and the national policy. It is, accordingly, necessary that the representatives should be chosen with due regard to their experience of public affairs and renowned for their honesty, integrity, broad outlook, and selfless patriotism. Every State now prescribes certain minimum qualifications which the legislators ought to possess. "Absence of limitation," in the opinion of Laski, "may give us a Younger Pitt, but gives us a large number of members who go to the legislative assembly merely for the prestige which membership confers." That frustrates the ideal of democracy and representa-

36. Laski, H., *A Grammar of Politics*, p. 115.

37. Mayo, Henry B., *Introduction to Democratic Theory* (Sterling Publishers, Delhi, 1967), p. 107.

tion. Laski suggests that a representative must possess previous experience and adequate knowledge of the working of a local body.

**Right to Public Office.** The Constitution of India provides equality of opportunity to all citizens in matters of employment under the State.<sup>38</sup> No citizen, the Constitution prescribes, shall on grounds of religion, race, caste or sex, descent, place of birth or any of them be ineligible for any office under the State.<sup>39</sup> This is the gift of democracy which gives equal right to all the citizens. The poorest citizen is as eligible for the highest office in the State as the richest. This shows that even the will of an average citizen has channels of direct access to the sources of authority spreading over all public offices, executive, legislative and judicial. To entrust the power to the mass of people means, naturally, a more close and stringent scrutiny of public administration.

It does not, however, mean that academic, professional and other like qualifications consistent and appropriate to the office to be held cannot and should not be prescribed and enforced. What it really means is that whatever qualifications are prescribed and whatever mode of appointment is adopted, it should be applicable to all alike and citizens should not be discriminated on grounds of birth, religion, race, caste or sex. It is, indeed, imperative to prescribe appropriate and specific qualifications to ensure honest, efficient and sound administration. Merit alone, therefore, be the sole criterion of all appointments. In India due to historical reasons an exception has been made in the case of Scheduled Castes and Backward classes and Tribes by fixing a certain percentage of representation for them. Intrinsically, this exception violates the basic principle of democracy. But the object of such an exception is to safeguard the interests of such castes and tribes for the time being as they had been all through the victims of social highhandedness of the 'classes and castes' who regarded them as untouchables and denied to them even the elementary requirements of life.

**The Right to Petition.** The right to petition entitles every citizen to send petitions, either individually or collectively, to the competent authority, executive or legislative, for the redress of grievances. In democracy, the governors cannot ignore the legitimate grievances of the people, because they are the ultimate sovereigns. The government must feel the pulse of the people and promptly respond to their needs, otherwise it hazards its own existence. No democratic government can afford to forget that tomorrow is the day of election.

The right to send petitions for the redress of grievances is an old right and the people had been practising it in all the countries. The classical example is the Grand Remonstrance, well-known in the Constitutional History of England. Now the Rules of Business of the Legislative Assemblies in almost all countries provide for the submission of such petitions. The Question Hour itself is essentially for the ventilation of grievances of the people through their representatives. In Switzerland the right of petition takes the form of Initiative and a specified

38. Article 16 (1).

39. Article 18 (2).

number of voters, through a signed petition, can initiate legislation either for the removal of certain evils in the existing law or providing for a new law the need for which is felt urgent.

**The Right of Criticising the Government.** "A society that is able to discuss," says Laski, "does not need to fight, and the greater the capacity to maintain interest in discussion, the less danger there is of an inability to effect the compromises that maintain social peace." The government which provides adequate opportunities to criticise matters of its administration and policies is really a democratic government. Democracy is a government by criticism, for truth only comes by the clash of opinion with opinion and every citizen has something of value to contribute and he must not be hindered in bringing it forward. "Democracy," according to Sir Stafford Cripps, "is a system of government in which every adult citizen is equally free to express his views and desires upon all subjects in whatever way he wishes, and to influence the majority of his fellow-citizens to decide according to those views, and to influence those desires." The right of criticising and assailing the policies is beneficial for the government too, for it provides the Government an opportunity to defend its intentions and practices and to acquaint the political sovereign what exactly its aims are.

When John Stuart Mill made his historic statement that vigilance is the price of democracy, his emphasis was on the free and frank criticism of the policies of the government and its administration. This is tantamount to controlling the government so that it may not act irresponsibly. Such control is more urgent today, for the functions of the government are so much more extensive and touch the very bones of individual lives. But the right to criticise the government is possible only in free and democratic States. It cannot be obtained in countries governed by dictators or those under foreign rule.

**The Right to Resist.** It is often claimed that a citizen has the right to resist the authority of the State if he is genuinely convinced that a particular law or governmental action is against his moral sense of justice. But resistance to such laws of the State or governmental actions is only a moral right and not a legal right, for no State can permit an action which intends to defiance of its authority and may jeopardise even its own existence. On the side of morality and justice, it may, however, be conceded that if the majority of citizens really feel and believe that the laws of the State or the actions of the government are tyrannical and are against the true interest of the people and their obedience may have demoralizing and degenerating effects on them, they may resist against such laws and authority and may even revolt. We shall revert to this aspect of the problems in the concluding part of this Chapter.

**The Enforcement of Rights.** Finally, every citizen must possess the right to enforce his rights. In the absence of such a right the civil and political rights are meaningless. Article 32 of the Constitution of India guarantees to every citizen the right to move the Supreme Court for the enforcement of Fundamental Rights. And for that purpose the Supreme Court is given general power to safeguard the Fundamental Rights as well as the power to issue directions or orders or writs, including writs



in the nature of *habeas corpus*,<sup>40</sup> *mandamus*,<sup>41</sup> *prohibition*,<sup>42</sup> *quo warranto*<sup>43</sup> and *certiorari*<sup>44</sup> which may be appropriate for any of the Fundamental Rights. In Britain, individual rights are safeguarded, although there is no declaration of Fundamental Rights by means of the "prerogative writs" which have been called by Dicey "the bulwark of English constitution". In the Constitution of the United States of America there is no specific provision empowering the Supreme Court to issue writs. The authors of the Constitution had assumed that the common law writs would be available to the citizens, and, accordingly, they specifically prohibited against the suspension of *habeas corpus*.<sup>45</sup>

But in India while a Proclamation of Emergency is in operation, Fundamental Rights relating to seven freedoms<sup>46</sup> stand automatically suspended. The President may also suspend the right to move Courts for the enforcement of any other fundamental right, but such an order must be laid before Parliament according to the requirements of the Constitution.<sup>47</sup> It is, therefore, only a temporary measure.

### THE CHANGING CONTENT OF RIGHTS

As said earlier, all States do not recognize and maintain an identical list of rights. They vary from State to State. Nor do we accept them dogmatically for all times and for all purposes. Rights are of changing content and they must vary with the wants of man and the conditions under which he lives. Things that appear fundamental to one age appear unnecessary to another. Our standards of values change and so do our methods of realisation. Take, for example, the right to property. Our interpretation of this right is not the same as was put upon it in the nineteenth century. Even in countries like Britain and the United States all political parties would uphold the right of the individual to possess property, but on conditions which differ considerably today from those that were considered normal, even a couple of generations ago. In fact, the right of social welfare has modified our conception of existing rights and some of them may be actually incompatible with them. We cannot, therefore, have a rigid system of rights. Our theory of rights should be

40. *Habeas Corpus* is intended to protect the citizen from an unlawful arrest and detention, particularly at the order of the Executive.

41. *Mandamus* is used to enforce the performance of a public duty by an official. It is not available if there is any other adequate legal remedy.

42. *Writ of Prohibition and certiorari* are appropriate to complaints of excess of jurisdiction. Prohibition is intended to prevent an inferior court or tribunal dealing with a matter over which it has no jurisdiction.

43. *Quo warranto* is issued for the purpose of determining the right of a person in office to hold on to that office.

44. *Certiorari* is available when a tribunal acts without jurisdiction as well as when it exceeds jurisdiction.

45. Article 1, Sec. 9(2). It can, of course, be suspended while the public safety is endangered by rebellion or invasion.

46. As contained in Article 19. (1) Freedom of speech and expression, (2) freedom of assembly, (3) freedom of association, (4) freedom of movement, (5) freedom of residence and settlement, (6) freedom of property, and (7) freedom of profession, occupation, trade or business.

47. Reference Articles 358 and 359.

consistent with and in conformity to our individual, group, and social needs. Any theory of rights which touches only one aspect of the problem is sure to create friction. The old theory of individualism has now become a political anachronism, as it touched the individual alone. The good of man is not any isolated object to be realised. It embraces the interests of man as an individual, interests of the group to which he belongs, and the interests of the community which embraces all those groups and humanity at large.

The system of rights, as such, must be considered as a whole. Moreover, Political Science deals with operative ideals. These ideals are to be worked upon by man for the social good. Social good can best be secured if there is proper adjustment between the ideals of man and his institutions. In case of disequilibrium, there can be no moral development of man and the realisation of his ideals. Rights, we may, then, conclude, are of a changing nature and they change in their content according to the needs of the individual and society. As for the present time, it is obvious that human reason has now become aware not only of the rights of man as a human being and a civic person, but also of his rights as a social person engaged in the process of production and consumption, and especially his rights as a working person.

## DUTIES

**What is Duty?** A duty is an obligation. A man is said to have a duty in any matter when he is under an obligation to do or not to do something. It is something we owe to others as social beings. When we live together we must let others live with us. This implies certain do's and don'ts. My right of living involves my duty to my fellow-men to allow them the same conditions of life. What is a right in regard to one's self is a duty in regard to others. They are two aspects of the same thing or two sides of the same coin. If one looks at them from one's own point, they are rights. If one looks at them from the standpoint of others, they are duties.

**Correlation of Rights and Duties.** It follows, then, that every right has a corresponding obligation or duty. Without duties there can be no rights. A valid claim is both a right and a duty. If society provides an individual with opportunities to feel happy and prosperous, it also imposes an obligation upon him that he should allow others the same opportunities of feeling happy and prosperous. If I have a right to work and earn my living, it is my duty to recognize the same right in others and accede to them those conditions in which they can, also, enjoy their right to work and earn their living. This is a simple, but the primary rule of social conduct; do unto others as you wish to be done by. I can enjoy my rights only, if I respect the rights of others. "A right", says Hobhouse, "is, no doubt, a species of claim. What distinguishes it from other claims is that it is one that it is the duty of everyone to respect, and unless this distinction is admitted there is no reason for the use of the term".<sup>48</sup> Without the corresponding obligation, the whole concept of rights becomes meaningless.

48. Hobhouse, L. T., *The Elements of Social Justice*, p. 36.

Since my claim to rights comes from the fact that I live with others and share with them the pursuit of a common end, social good, it is the duty of the State to see that I act as a moral unit of society. As the State acting through the Government maintains and co-ordinates rights, and helps to create that atmosphere in which man can seek to himself at his best, it is the duty of every citizen to help the Government in realizing the purpose for which the State came into existence and continues to exist. This means that a citizen owes a duty to the State as organized in Government.

Before the advent of a democratic government emphasis was only laid on the "rights of man" as a condition precedent for social progress and welfare. Even today, in countries which are despotically governed, the popular demand remains the same. But in countries with popular governments the emphasis is on the duties of a citizen and not merely on his rights. Such duties the citizen owes not to the State alone, but also to his family, neighbours, fellow-citizens and to society at large. The success of democracy will, in practice, be determined by the extent to which citizens are prepared to perform conscientiously the duties required of them.

**Duties: Legal and Moral.** Duties, like rights, are of two kinds: moral and legal. A moral duty is that which is enjoined upon the people on moral grounds. It is true that moral duties form the basis of legal duties, but a moral duty may not be supported by the laws of the State. Its sanction is the moral opinion of the community. If there is breach of moral duties there is nothing legally to punish the wrong-doer, though it may mean social condemnation. It is my moral duty to help the poor, the needy and the sick, because as a moral agent of society I must try to create those conditions which contribute to the social good. Similarly, I owe a duty to my parents to be obedient and respectful towards them. But, if I do not do my duty, the laws of the State cannot punish me for that. It is only a moral duty. Nevertheless, moral duties ought to be fulfilled in view of their effect on public welfare.

Those duties, which are enjoined on citizens by the laws of the State and are enforceable in courts, are known as legal duties. Failure to perform legal duties is punishable. It is my duty to obey the laws of the State, if I do not, I can be punished accordingly.

**Positive and Negative Duties.** Duties may further be divided into positive and negative. When a citizen exercises his rights in such a way as to maximise social progress and welfare, he performs a positive duty. Examples of a positive duty are: obedience to the laws of the State and defence of the country, helping the State in maintaining law and order, paying taxes and local rates, to honestly exercise one's vote, to perform one's duties when elected to representative assemblies, etc. Positive duties aim at co-operation with government in realising the end of the State.

When a citizen does not do a thing which the law prohibits, he performs a negative duty. The law directs every citizen not to prevent others from exercising their rights and when he obeys the law, as such, he performs a negative duty. A negative duty, therefore, implies obedi-



ence to don'ts as prescribed by law. But compulsion cannot go a long way towards making the citizen to fulfil his duties. There must be spontaneity on his part and the will to do them fairly and with devotion. It is, under the circumstances, necessary that laws must be the expression of the will of the people so that they may obey them willingly and not for fear of punishment.

**Some Important Duties of a Citizen.** Following are the most important among citizen's duties to the State:—

1. **Allegiance to the State.** Every citizen owes allegiance to the State to which he belongs. This implies the duty of defending the State in case of war, and service and loyalty to the State to maintain its integrity. It is the duty of every citizen to defend the State against all enemies and dangers and to assist in the maintenance of peace and order. The State can call upon any citizen to take up arms in its defence. In short, every citizen should be prepared, if necessary, to lay down his life in defending the State and to discharge the duties involved in his allegiance to the State. The Constitution of the U.S.S.R. prescribes universal military service and regards it as an honourable duty of the citizens. If military service is an honourable duty of the citizens of the U.S.S.R., the defence of the country is their sacred duty.

2. **To obey Laws.** The first commandment to the Soviet citizen is to faithfully abide by the Constitution and the Soviet laws. In every State it is the supreme duty of the citizens to obey its laws, respect its institutions, obey the orders and directions of the government and to assist in creating that atmosphere wherein should flourish the spirit of law-abidingness. Good citizenship consists more in obedience to laws than in any other thing. Laws are made for the social good and those who respect and obey laws have the good of the community at heart. Disobedience of laws, violation of the rule of law, wilful defiance of authority and transgression of the directions of government retard the progress of the community and are the symptoms of a diseased State. It is an axiomatic truth coming down from Aristotle that a good citizen makes a good State.

3. **Payment of Taxes.** For performing functions which the State undertakes it has to spend huge sums of money. It is the duty of every citizen to pay taxes, national and local, punctually and regularly. If the State has no money, it cannot spend. Without money the State has not the wherewithals for organising the machinery of government and for running it successfully, particularly when the sphere of the State is ever-expanding. Taxes have, therefore, been held in all countries compulsory contribution and it becomes a legal duty of citizens to pay them.

4. **Honest exercise of Franchise and to hold a Public Office.** In a democratic State, all adult citizens, subject to certain qualifications, exercise the right to vote, to elect their representatives, and to offer themselves for election. Voting is a fundamental and essential part of a citizen's duty to the government of his country. But this is not enough. A democratic form of government is a party government. A voter has to choose between one party and another. The vote should,

therefore, be exercised with judgment, discretion, and rectitude. There can be no good government unless electors regard their votes as a sacred trust. Similarly, those who are elected should occupy the public offices in a spirit of service and justify the trust the community has reposed in them.

**5. Duty to assist Government in the Maintenance of Law and Order.** It is the duty of citizens to help the administration in the maintenance of law and order; the primary function of the State. The law imposes on citizens the obligation to inform the authorities if an offence has been committed or is likely to be committed and to render all possible assistance in the detection of crime. The State can call upon its citizens to render service in times of emergency and assist the government in maintaining peace and order, and ensure the safety of the State.

**6. Other Duties.** Similarly, it is the duty of citizens to serve as jurymen or to act as assessors, whenever called upon to do so. Citizens, also, owe a duty to the State to render service as members of public committees, organizations, local bodies, representative assemblies, etc., when called upon to do so. Finally, every citizen should develop the 'social conscience' and 'public spirit'. He should place public good above private interests and render social service, whenever the occasion arises, as a willing worker. Citizenship is active and a good citizen is well-informed on all matters of public importance and he endeavours to arrive at a balanced judgment on them. That is why democracy is perpetually faced with the problem of deciding how to achieve a proper balance between rights and duties. The duties of a citizen are, therefore, many and arduous and the State as a matter of reality is what its citizens make it.

### THE PROBLEM OF POLITICAL OBEDIENCE

Rights, we discussed, are inseparable from duties and duties we divided into negative and positive. When a citizen exercises his rights in such a way as to maximise social progress and welfare he performs positive duties, which *inter alia*, consist in allegiance to the State, its defence in case of war, service and loyalty to maintain the integrity of the State, obedience to its laws, and helping the administration in maintaining law and order. The positive duties, in fine, aim at active co-operation of the citizens with government in realising the end of the State. The end of the State and how it can be secured had ever been the baffling problem of all times and with it has varied our conception of political authority and obedience to the State. The problem has assumed new dimensions now for two obvious reasons and both are the indirect results of the industrial revolution which is now near a point of culmination. The technological age or "Urban Civilisation," as Wilson calls it, has rendered homogeneity of standards of life and conduct impossible and the breakdown of the traditional authority has tended to disrupt those types of social control that have been invaluable to political authority in the past. Secondly, the activities of the modern government have become so numerous and complex that they embrace every aspect of man's life and at every step he is confronted with the authority

of the State. Paradoxical as it is, while our ideas of individual and social welfare throw us more in the lap of the State, we have, at the same time, adopted a more critical attitude towards political authority.

The problem of obedience as a matter of duty for the citizen, accordingly, does not remain so simple. Old ideas do not solve the modern problem and yet they do help us to look at the question and solve the modern riddle. The coercive authority at the disposal of the State to make us obey its laws has ever remained the most important answer to the question of political obedience and with the breakdown of the long-established authorities it has in modern times received an added importance. Force, is undoubtedly, an important element in the origin of the State and its maintenance, but it has not been the only or the most significant element in holding the State together. As MacIver has said, "Men have often acquired dominance with the aid of force, but none has kept the position thus acquired by sole reliance on this means". Force is a crude weapon to apply to the mass of citizens to ensure obedience and a clumsy tool of political progress. T. H. Green has succinctly remarked that will, not force is the basis of the State. The State which lives and thrives upon force can never last long. Nor can it command the respect for its authority and spontaneity in the obedience to laws.

Another, but familiar, theory of obedience is the belief in the fact that the State provides a system of order and people obey the State to ensure security to life and property. Hobbes, for example, thought that guarantee of order by a ruler constituted in itself a sufficient claim on the citizen's obedience to his authority. But this is not exactly correct. Though order is an essential requirement of civilised life, yet there may be many people who would prefer to risk their lives to obtain different conditions rather than to live them out in a so-called 'peace which made life for them not worth-living. The real essence of order, which the State is charged to maintain is to create and sustain that atmosphere in which every man should get an opportunity for the development of his faculties so that all grow and expand to the best of their capacity and ability.

Religious feelings and religious prejudices have also played their part in determining people's attitude to the problem of obedience. In the earlier stages of the development of the State, it was the "higher law" which enjoined that God had commanded men through Revelation to obey "the powers that be". In the seventeenth century many people held that it was part of man's duty to God to obey the State. In Britain, for instance, Sir Robert Filmer argued that, since it was natural for man-kind to be ruled by Kings, it must have been so ordered by God. God, he said, had entrusted the right to govern to Adam and his descendants. Charles I had, therefore, a divine right to govern by virtue of his direct descent from Adam. Here was the theory of Divine Right of Kings which made obedience to the commands of the Kings a religious duty. The Kings regarded themselves as the breathing images of God on earth. The Theory of Divine Right of Kings also made succession to the throne hereditary. But when the Kings regarded themselves answerable to God alone for their actions and the subjects had no justification to question



their authority, the virtuous qualities of obedience as a matter of filial duty were lost. The people revolted against the despotism of the rulers. Today, the theory of "higher law" does not find any adequacy as a matter of political belief. It must, however, be admitted that Islamic law still exercises a dominant influence in matters of obedience in the Muslim States and it is a great rallying force for political authority.

Out of the theory of "disobedience and nullification"<sup>10</sup> emerged the early democratic answer that men should obey the State because it was founded on contract. Hobbes was the first to give it a matter of fact analysis, but by excluding the King from the contract, he established that the authority of the sovereign was absolute and subject to no conditions. All the subjects must obey him as disobedience to his authority meant conflict and war, the conditions which made life "short, nasty and brutish" in the state of nature. John Locke, on the other hand, upheld the Revolution of 1688 and justified the reasons for which Charles I had been beheaded. He tried to analyse the reasons why men should obey the commands of the King, who had clearly been chosen not by God, but by the people through the medium of democratically elected Parliament. His reference was to William and Mary who became the occupants of the British throne after the Revolution of 1688.

Hume did not accept the theory of consent as the basis of obedience. He wrote, "obedience or subjection becomes so familiar that most men never make an enquiry about its origin or cause, more than about the principle of gravity". He argued that even if it were true that Government must ultimately rest on consent of the people, it "usually means little more than the acquiescence of inertia". His conclusion was that the people obey the State as a matter of habit. Similarly, Dr. Johnson believed that obedience to authority was not merely necessary to maintain order, but something natural to mankind. "Every man", he said, "is born consenting to some system of government". Edmund Burke was of the opinion that men ought to obey the State as they knew it, because it represented the accumulated wisdom of the generations, and the accumulated wisdom of the society must be presumed to be sounder than the reasoning of an individual. The contribution of customs and traditions was also emphasised both by John Austin and Sir Henry Maine. They saw obedience to the State something customary and traditional, "defined and crystallized—almost hallowed—by law"

But customs and traditions representing the accumulated wisdom of generations will only be obeyed so long as we are convinced that they are good customs and traditions which must be obeyed. If they represent the follies of the generations then the legitimacy of their obedience disappears. Karl Marx advanced his own arguments to the idea of habitual obedience. He held that the people obeyed the State as a matter of habit, though a bad habit. The Capitalist State, he maintained, was a conspiracy of the few against the exploited masses. It was tyranny "established by force and perpetuated by guile". The exploited and oppressed masses obeyed the State only so long as they were powerless to resist, "or" because they were tricked by propaganda into believ-

ing that they ought not to resist. But once they realised the facts of their oppression and exploitation, they would unite to throw off their chains".

Most of the theories of obedience, we have discussed above, have one common feature. They determine the relationship between the individual and the State over which the former has little or no control. Obedience to the State was conceived of as a result of either habit or duty or compulsion. They do not provide an opportunity to the individual to decide the terms on which he will or will not agree to obey the State. From the sixteenth to eighteenth century, however, European political thought veered round various theories which filled in the gap and all these theories essentially emphasised the need for obedience to be based on consent. At this stage of political development consent was the result of a contract or covenant between the ruler and the ruled. Whatever be the conditions of contract and the circumstances leading to the contract and the contribution that the Contract Theory made to the solution of the problem of obedience, there is one important result which emerged from such discussions. The Social Contract Theory brought into prominence the concept that the individual is, or can be the master of his own political destiny. Obedience to the State is not divinely ordained, but it is the result of man's own determination wherein they agree to obedience for certain specific guarantees. The individuals, therefore, by agreement consent to obey as long as the terms of the contract are fulfilled. Any deviation therefrom, either by the ruler or the subjects, was tantamount to "breach of faith".

But the "breach of faith" theory was still no answer to the problem of political obedience. The idea of contract helped men to make the transition. "It was a bridge between the notion of an absolute ruler, responsible primarily, if not exclusively, to God, and the conception, which was to be developed in the nineteenth century, that Government ought to be responsible to the people through the medium of a democratically elected Parliament".<sup>50</sup> Rousseau gave a new meaning to the Contract Theory when he said, "The Government exists by grace of the sovereign and its power can be resumed or divided at will by the sovereign".<sup>51</sup> For Rousseau, the sovereign is the people, the sum of individuals acting as a community. The individual is himself an integral part of the community and he has the same extent of control over the activities of the community as the rest of his fellow citizens. The contract, according to Rousseau, is really between two aspects of the individual, "Each giving himself to all, gives himself to nobody". Men are at one and the same time, "a passive body of subjects and an active body of sovereigns". Then, Rousseau introduces the concept of the General will. Unlike Locke, he puts no faith in the will of the majority. The General will is the real will which is also the will of the individual and by obeying the General will he obeys himself.

The eighteenth and early nineteenth centuries saw the emergence of two new ideas in the body politic and they gave a new meaning to the

50. Pickles, Dorothy M., *Introduction to Politics*, p. 68.

51. *The Social Contract*, Preface by Ernest Barker, p. xlv.

problem of obedience. The first was the belief in human equality as enunciated by the constitution-makers of both the American and French Revolutions. The American Declaration of Independence in 1776 declared, "We hold these truths to be self-evident that all men are created equal". In 1789, the French Declaration of the Rights of Man affirmed that "Men are born and remain free and equal". The American Declaration also included the second idea. Among men's fundamental and inalienable rights was included the right to the pursuit of happiness. Once men began to believe that they were all equals and they had an equal right to conditions which made life worth-living in their own judgment, they came to the conclusion that they were equal participants in the State and, accordingly, they ought to have equal right to determine what made them happy. But one man's honey may be a poison for another and, consequently, the happiness of some may be secured at the cost of the unhappiness of others. If so, who is to decide which shall have priority, happiness of some or unhappiness of others? Then, what makes happiness for some may be considered morally wrong by others. How this tangle is to be solved? The first difficulty was solved by relying upon the concept of natural law. It was contended that operation of natural laws could produce universal happiness. Adam Smith, whose ideas dominated the nineteenth-century thought, maintained that the economic system in which individuals were all pursuing their own interests, and often conflicting interests, would still produce, "by some beneficent law of God or nature, a happy and harmonious community". Another solution of the difficulty was offered by suggesting the creation of some political machinery which would decide what made people happy.

This is in line with the teachings of Rousseau, although traces of it are found in the Greek political thought. The organic theories, as they are called, regard the State as a universal aspect of individual's will and it is, therefore, a man's rational and moral duty to obey the State. The Greek philosophers tell us that it is in the perfect State that the perfect life of the individual can be found. Since the perfect life is a rational and moral life, the rational man will never think of disobeying the State. In fact, he will consider it his moral duty to accept political authority to enable him to attain perfect life. This view, which has come down the course of history, was expanded in the writings of Hegel. Hegel, the nineteenth-century German philosopher, assumed that the evolution of society was one of progress towards the good, and postulated the ultimate attainment of an ideal system in which the rational man would be free, because he would be in complete harmony with the will expressed by the laws and conventions of an ideal State. There would, then, be no problem of disobedience, for in the ideal State the Government would always represent the real will of the community. Hegel's aim was to emphasise that the State and citizens are inseparable and each moulds and shapes the other until they reach full development in harmony.

T. H. Green, another nineteenth-century philosopher, gave it a democratic interpretation when he said that if the State did not succeed in winning the allegiance of the citizen, the fault lay in all probability with the State. "It is a sign", he said, "that it is not a true State; that



it is not fulfilling its primary function of maintaining law equally in the interest of all, but is being administered in the interest of classes". The essential point of difference between Hegel and Green was that with the former if the citizen did not freely obey, the citizen was not a true citizen whereas Green concluded that the State was not a true State if such an eventuality of disobedience was to arise. Hegel, thus, glorified the State and regarded it as the "perfected rationality" to command and guide the individual. Even Trietschke, who regarded the State as power, did not hesitate to purify it with moral purposes and argued that all morally minded persons must obey the State and accept its commands to guide their daily lives.

Organic theories, whether their intention is democratic or autocratic, have in common the belief that a society possesses a personality of its own, that it is different in some way from that of the individuals comprising it. They believe that, as Lindsay put it, "there is something which can be called a general will because there is something which can be called a common mind....When men who are working together pool their experiences and share their difficulties, there can and often does come out of their discussions a decision which is really the decision of the society, which no individual could have come to of himself, and which each yet recognises as more completely carrying out the purposes of society than his own original suggestion".<sup>51</sup>

The majority of the nineteenth-century political thinkers, in Britain at any rate, did not believe in the concept of the general will. Jeremy Bentham elaborated a theory of obligation which assumed, not only that human desires did conflict, but that, as far as we knew, they always would do so. He believed that the purpose of the government was to make men happy. He also believed that all men were equal and they had, as such, an equal right to decide for themselves the kind of government which would bring them happiness. Since individuals differed in their views, they would not all be able to have what they wanted. But if all the individual wisdom, each man counting for one, were added, then the opinion expressed by the majority would represent the maximum happiness attainable in the circumstances. The purpose of the State, according to Bentham, was to bring maximum happiness or social utility and we obey the State because it is in our interest to obey. Utility, thus, became the rationale of political happiness within the idea of the majority rule.

Bentham's conclusions fulfilled both the conditions, the principle of equality and the right to happiness, necessary for political obedience. But Bentham's criterion of happiness was numerical. It did not take into consideration the qualitative aspect of happiness and, therefore, failed to answer what really constituted the best interests of the individuals and who should really govern them and how. John Stuart Mill could not accept the idea that happiness were things that could be added up in the number of votes like quantities of merchandise. "It is better", he said, "to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied".<sup>52</sup>

51. As quoted in Carritt's *Morals and Politics*, p. 204.

52. John Stuart Mill, *Utilitarianism, Liberty and Representative Government*, p. 9.

John Stuart Mill was right but how qualitative happiness can be obtained? The answer is that the State can work only through institutions and human ingenuity has not so far devised any institution which is capable of measuring qualitative standards. And until we have found a way of translating the qualitative differences into institutional terms, they must remain irrelevant for political purposes. The only practical way so far discovered is that each man counts for one and all stand on a footing of equality and, therefore, have equal opportunities to make the best of themselves. My voice counts in the same way and with equal force as that of my neighbour and all of us have equal access to the facts which ought to influence our choice in electing our rulers and approving their policy.

But it cannot be denied that the majority rule and the theory of obedience to its authority had been the harbinger of all kinds of social, economic and political ills. The cult of the majority rule has often stimulated intolerance to the extent that the minority or minorities bluntly question the rational justification of the majority to demand obedience to its unbridled authority. The Pluralists even urge that the ordinary citizen has the duty to ask, why should I obey the State. Laski is of the opinion that those who have the moral sense must be allowed the right to judge the actions of the State and determine their attitude to political authority.

The psychological approach has its own explanation to offer in solving the knotty problem of obedience. James Bryce dealt with the problem comprehensively and sought to explain that "inertia, deference, sympathy, fear and reason were the outstanding motivations of obedience."<sup>51</sup> Though psychological approach is valuable in explaining the issue of obedience, but it does not explain why people should obey if the commands of the State do not find their approval and thereby fail to coincide with their moral judgment? To put it in clear terms, should not the individual strive for the abolition of those laws which are arbitrary and have been imposed upon him by the tyrannical political authority, or are unjust or are opposed to the interests of the community as a whole? The tyranny of the majority is worse than the tyranny of an individual and it is a serious challenge to parliamentary democracy.

Here we, again, come to the same question with which we began this discussion on political obedience. Has the citizen, other than purely legal duty, to obey the State? The answer involves broader ethical considerations and it can be treated logically with the end of the State. The end of the State, we said earlier, is to secure equity and justice for all citizens in order to realise the highest national well-being. This we cannot do by dwarfing man and frustrating his individuality. Man and society march together and both are inseparable. A moral man can make a moral society and for that matter a moral State and since the State is not an end, it is, therefore, the moral judgment of man which should judge the action of the State and determine whether it adequately fulfils its purpose. If the individual finds that his moral values do not

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53 Bryce, J., *Studies in History and Jurisprudence*, Essay IX.

coincide with the actions of the State, should he defy the political authority and disobey the laws which he considers oppressive and encroaching?

Laski is of the opinion that the State is to be judged by the moral test of adequacy and "if I hold that its power is being exercised, not for the ends implied in its nature, but for the ends incompatible therewith, the civic outcome of such perception is the duty of resistance." In the beginning, it is the moral duty of all right-thinking citizens that they should protest against all such unjust and oppressive laws or actions of the State, which do not provide for the reasonable satisfaction of their impulses, and adopt all legal and constitutional means to get them repealed. If their protest bears no fruit, they have the right to take the extreme step of even resisting the government by breaking those laws. "Nobody need challenge the right to resist," observes Srinivasan Sastri, "because resistance to the State may sometimes become a right and that very moment it becomes a duty as well. No one who cares for citizenship and for the public welfare can question the right of each citizen to judge for himself in the last extremity. When he has fought his fight and failed to undo a public wrong and he feels in his conscience that he cannot acquiesce in it, nothing ought to keep him from resistance if he thinks he ought to resist."<sup>54</sup> Resistance to laws and the authority of the State is, accordingly, a conflict between citizen's legal duties and a citizen's conscience, and the latter is the most cherished quality of a citizen. He is an active participant in the affairs of the State and ever vigilant about his rights and duties.

Gandhi, too, favoured resistance. His mission in life was to moralise man and society. A moral man and a moral society could only be obtained when truth stood arrayed against tyranny whether that tyranny was of the State or of the individual. Gandhi evolved a way of resisting evil through the organisation of truth and non-violence, *satyagraha*, holding on to the truth. The technique of *satyagraha* is Gandhi's unique contribution to the technique of resistance. Being a practical man, he ceaselessly fought all through his life against evils of all kinds first in South Africa and later in India and at both places he admirably won his non-violent battle.

But disobedience to the laws of the State should not be wilful. The decision to resist must be taken after a deep consideration and due caution with the conviction that the law to be resisted is immoral and socially harmful. Those who resort to resistance must also be sure of the success in their venture. It is, in the opinion of MacCunn, "counsel not of cowardice but of prudence that resistance without a reasonable prospect of success, though it may speak of much personal heroism, is a political mistake and a public calamity." Gandhi's technique of *satyagraha* was the weapon of the strongest and the bravest, the true man of God who sought to conquer evil by truth and to resist physical force by taking suffering on himself instead of inflicting suffering upon the opponent.

Disobedience to the laws of the State shakes the very foundations

<sup>54</sup> Sastri, V. S. Srinivasan, *The Rights and Duties of Indian Citizens*, pp. 97-98.



of an ordered government and when the authority of the government is shaken, there reigns nothing except confusion and chaos. It is tantamount to rebellion against the duly constituted authority of the State. Laski says, "I ought not to resist if I am convinced that the State is seeking, as best as it may, to play its part, and for most that perception will result from what enquiry they undertake. I ought not further to resist unless I have reasonable grounds for the belief that the changes I advocate are likely to result in the end I have in view." The duty of resistance, as such, is not merely a question of caution, but one of supreme political wisdom. It goes without saying that it is the duty of a citizen to protest against the unjust and oppressive laws of the State, but the form of protest, in the first instance, must be constitutional and legal. If the government deliberately brushes aside devices of constitutional protests or frustrates them and continues unheeded with its capricious policy, then, resort to resistance is the only but the extreme course left. Resistance should be the medicine of the constitution and not its daily bread, or, as Laski put it, "the right to disobedience is of course to be exercised at the margins of political conduct. No community could hope to fulfil its purpose if rebellion became a settled habit of the population." And one is not sure of the outcome of a rebellion. Even if it is successful and the revolting forces are able to overthrow the oppressive government and capture power, will the good which is likely to result outweigh the harm which the revolution has brought in? History can provide us with innumerable examples of the fact that nothing is more unpredictable than the course of a revolution.

It is, therefore, the duty of the citizens to obey the laws of the State and respect the duly constituted authority, provided its laws and functions are in accord with the general opinion in the State. The State must rise with the people and their aspirations. The people, too, must give a fair chance to the policies of the State to prove their worth to the citizen body. If the actions of the government are unjust, iniquitous and encroach upon the rights of the minorities, it is the duty of the citizens to protest against the highhandedness of the majority and tap all constitutional means to get them remedied. Since democracy provides adequate means to seek redress, the spirit of resistance is of less value than in a government unresponsive to the will of the people. But if the majority uses heedless coercion rather than a rational appeal, to obey and agree to its policies, the duty to resist assumes a practical importance, irrespective of the considerations of order. It is both a moral and a political sin to keep on obeying when there is reason to disobey. Oppression and exploitation, according to Gandhi, are made possible by co-operation, willing or forced, of the oppressed in their own exploitation or oppression through cupidity, ignorance or fear. Eternal vigilance is, therefore, the prime need to ensure liberty, and that is the essence of obedience. "Even the most despotic government," Gandhi maintained, "cannot stand except for the consent of the governed, which consent is often forcibly procured by the despot. Immediately the subject ceases to fear the despotic force his power is gone." Laski held the view that the danger today is not in disobedience but in obedience to the laws of government that are tyrannical and spell unbounded evil.

## SUGGESTED READINGS

- Allen, G. K. : *Democracy and the Individual.*
- Barker, E. : *Principles of Social and Political Theory*, pp. 136-72; 226-44.
- Bosanquet, B. : *The Philosophical Theory of the State*, Chap. VIII.
- Burns, C. D. : *Political Ideas*, Chap. VII.
- Catlin, G. E. G. : *A Study of the Principles of Politics*, Chap. IV.
- Cranston, Maurice : *Human Rights Today.*
- Gilchrist, R. N. : *Principles of Political Science*, Chap. VI.
- Green, T. H. : *Lectures on Principles of Political Obligation*, Section A.
- Hobhouse, L. T. : *The Elements of Social Justice.*
- Hocking, W. E. : *Law and Rights.*
- Laski, H. J. : *A Grammar of Politics*, Chap. III.
- Laski, H. J. : *Danger of Obedience and Other Essays.*
- Lord, A. R. : *The Principles of Politics*, Chap. VIII.
- MaIlwain, C. H. : *Constitutionalism: Ancient and Modern.*
- Pickles, Dorothy M. : *Introduction to Politics*, Chaps. III, IV, VIII.
- Ritchie, D. G. : *Natural Rights*, Chaps. XIV, XVI.
- Sidgwick, H. : *Elements of Politics*, Chaps. IV, VIII.

## Liberty and Equality

**What is liberty?** Liberty is derived from the Latin word *liber* which means free. It is a word of negative meaning denoting absence of restraint. Its primary significance is to do what one likes regardless of all conditions. But this is obviously an impossibility. Liberty in the sense of a complete absence of restraint cannot exist. We cannot live together without common rules. Presence of common rules of behaviour is the consequence of our gregariousness. If I choose to do all that I wish, regardless of the interests of others among whom I live, there is likely to be perpetual strife and conflict in society; conditions of chaos and anarchy. Such a society does not provide freedom for me or for others. "Historic experience," as Laski has said, "has evolved for us rules of convenience which promote right living; and to compel obedience to them is a justifiable limitation of freedom."<sup>1</sup> By liberty, therefore, we mean freedom to do everything provided it does not injure the freedom of others. It implies necessary restraint on all in order to ensure the greatest possible amount of liberty for each. Liberty, in this sense, can be maximised only when there is mutual respect and goodwill and all follow the maxim "do unto others as you wish to be done by". In other words, actions of all men should be subject to those restrictions which are deemed proper and are for the good of all. Such restrictions do not destroy liberty. Liberty is destroyed only when restraints are arbitrary and unjust. If restrictions "embody an experience I can follow and, in general, accept", my liberty is not endangered. In reality, it is enhanced. If I am not allowed to rob another, or to commit murder or to drive on the wrong side, my creative impulses do not suffer frustration. Law, accordingly, is the condition of liberty.

But liberty is not a mere negative condition. It is a more positive thing. Liberty can exist only when the State maintains those conditions, which help man to rise to the full stature of his personality. Liberty, according to Laski, is "the eager maintenance of that atmosphere in which men have the opportunity to be their best selves." It constitutes enjoyment of those rights and creation of such opportunities which help man to grow to be the best of himself, to develop his faculties, and to plan his life as he deems best. The true test of liberty lies in the laws of the State and the extent to which they help a citizen to develop all that is

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1. Laski, H., *A Grammar of Politics*, p. 143.



good in him. Liberty is, thus, a product of rights. It thrives best where rights are guaranteed to all without any distinction of sex, caste, creed, colour or status in society.

**Liberty and Sovereignty.** The Individualists, the Anarchists, the Syndicalists, and many other schools of thought regard liberty and sovereignty opposed to each other and offer their own explanations. The Individualists assert that sovereignty of the State embraces every phase of human life and at every step the individual is required to obey its laws. Laws restrict liberty and crush initiative as they are of the nature of commands and prescribe a certain way of life. They hold that the State is a necessary evil and its functions are negatively regulative or protective. It should only maintain peace and order and leave the individual alone, *laissez faire*, to manage his own affairs and develop freely according to his own ability and capacity. The Anarchists are out to destroy the State and establish in its place a stateless society where liberty will be supreme. They regard political authority, in any of its forms, unnecessary and undesirable. "Liberty of man", according to Bakunin, founder of scientific Anarchism, "consists solely in this, that he (individual) obeys the laws of Nature, because he has himself recognised them as such, and not because they have been imposed upon him externally by any foreign will whatsoever, human or divine, collective or individual." The Syndicalists are similarly hostile to the State as its laws and authority perpetuate the interests of the capitalist class of the society. The Socialists, on the other hand, stand for the maximization of the functions of the State and justify its interference in order to promote social good.

Apparently, there seems to be fundamental contradiction between the sovereignty of the State and liberty of the individual as the more there is of the one, the less there is of the other. But really it is not exactly so. The purpose of rights is to enable men to live, to enjoy life and to develop to the full potentialities of their individual personalities. Rights are, therefore, means to an end and the State provides conditions to the realization of an end. That end, though it may differ in many ways for different individuals, may be summed up in one word, liberty and it is the attainment of men's ambition to be free to live their own lives in their own way. But it means moral freedom and not absence of restraints on their freedom of action. Clearly, men who live in society cannot be free from restraints. If they were, the result will be, not liberty, but licence, anarchy and chaos. Restraints are necessary in the interest of order and of the harmonization, in so far as that is possible, of our different conceptions of liberty. As Hobhouse has put it, "the liberty of each... must, on the principle of the common good, be limited by the rights of all, ... in general, my rights are my liberties; and in protecting my rights, the community secures my liberties."

The system of rights is the system of harmonized liberties because my rights are your duties and duties are nothing, but restraints on the unrestricted liberty. Laws are, accordingly, the conditions of liberty. They do not curtail liberty, they maintain and enhance it. They create a condition in which every individual enjoyed the maximum freedom to do as he pleased, compatible with the right of others to the same extent of freedom. If the murderer is arrested and convicted, it is the realization of liber-

ty, for law which punishes the murderer protects and defines the rights of men. Restraints on freedom of action actually add to happiness. Certain laws of the State add to the creative faculties of man. Laws limiting the hours of work are restraints on workers just as much on employers. Originally, the workers bitterly opposed all such restraints. But these restraints save the workers from the temptation of injuring their health by excessive labour and consequently add to their well-being. The same is true of legislation forbidding child labour and establishing compulsory education. All such laws were fiercely resisted by parents who did not want to lose money the child might earn. They were also condemned by well-meaning and sincere people as interference with freedom. And so they were. But these interferences aimed to secure a fuller life for the children, and ultimately for the parents themselves. It is also true of numerous other measures. Order made by sensible laws and conventions opens up a number of possibilities which would not have existed otherwise. T.H. Green has justly said, "Much modern legislation interferes with freedom of contract, in order to maintain the conditions without which a free exercise of the human faculties is impossible."

The laws of the State, in sum, are not negation of liberty. They are the medium of liberty. It is, however, wrong to claim that every prohibition issued by the State is justified and it adds to the liberty of the people. If the prohibition goes beyond what is necessary and frustrates the life of spiritual enrichment, it is invasion on the liberty of man. "What each of us desires in life is room for our personal initiative in the things that add to our moral stature. What is destructive of our freedom is a system of prohibitions which limits the initiative there implied."<sup>2</sup> Man is really not free, if he feels that he has no means to express his opinion and impress his point of view upon those who exercise authority. Free expression of opinion is allowed in a country with a democratic machinery of government. There is no liberty where the individual is subordinated to the will of the whole community to merge his identity in it or in an authoritarian State which will leave its citizens free for certain things, but not for expression of opinion in any way. To enjoy true liberty neither freedom nor authority can be absolute and complete. "Freedom unrestrained by responsibility becomes mere licence," says Dewey, "responsibility unchecked by freedom becomes mere arbitrary power. The question then is not whether freedom and responsibility shall be united, but how they can be united and reconciled to the best advantage. This is indeed the central problem of all political philosophy and practice." Freedom is, thus, all a matter of adjustment. Sovereignty carried to the extreme becomes tyranny and destroys liberty, and liberty carried to the extreme becomes anarchy and destroys sovereignty.<sup>3</sup>

### KINDS OF LIBERTY

The term "liberty" has been used in a variety of senses and with a great latitude of connotation. Montesquieu said that "there is no word that admits of more various significations, and has made more different impressions on the human mind than that of liberty." For a clear under-

2. Laski, *A Grammar of Politics*, p. 143.

3. Gettel, R.G., *Introduction to Political Science*, p. 149.

standing of what liberty stands for, we distinguish between the various meanings of the term.

**Natural Liberty.** First, we have the concept of natural liberty. It is generally used to identify it with the unlimited right of man to do whatever he likes. Natural liberty is supposed to have been enjoyed by man independently of and antecedent to the existence of the State. With the emergence of the State absolute freedom of doing whatever one liked to do disappeared. While analysing his theory of Social Contract, Rousseau said, "What a man loses by the social contract is his natural liberty and an unlimited right to anything that tempts him, which he can obtain." But, as we have seen, such a condition of liberty is impossible. It is licence rather than liberty, as natural and unlimited liberty of one encroaches upon the natural rights of others. True liberty can only be realised in the State and not without it. The liberty of one is not a contravention of the liberty of another. It is, according to Herbert Spencer, freedom for every man "to do that which he wills provided he infringes not the equal freedom of any other man."

The doctrine of natural liberty, though earlier in origin, is closely connected with the idea of the law of nature. According to the Romans, Natural Law or Law of Nature was the law of reason which bound together men in social bonds under common rules of life. The theologically-minded Middle Ages identified this Natural Law with the Law of God and of the Church. In the seventeenth and eighteenth centuries it became a dogma of political obligations. Locke, in particular, emphasized the connection between Natural Law and freedom, and his ideas were embodied in the American Declaration of Independence in which the equality and freedom of man are postulated. It received a still more vigorous treatment at the hands of Rousseau and, thus, provided a basis for the French Revolution. Rousseau's political standard was the state of nature in which all men were equal. Natural equality, thus, became the essential principle of Natural Law and it conferred upon man certain inalienable rights. The eighteenth-century *Encyclopædia* stated, "Natural equality is that which exists between all men by the very constitution of their nature. It is founded upon the human nature which is common to all men who are born, grow, live and die in the same way. Therefore each must treat all others as equal to himself. The consequence of this is: first, that all men are naturally free, secondly, that we are to treat our inferiors as by nature our equals; thirdly, no one may claim any particular right above the rights of others unless he has acquired it." This is the true meaning of equality and if natural liberty confers such basic rights, which we may call natural rights, it is beyond doubt acceptable. But it is wrong to hold that natural rights confer the right to absolute freedom. Rights, as previously said, carry with them corresponding obligations.

**Civil Liberty.** Civil liberty, as opposed to natural liberty, refers to the liberty enjoyed by man in society. Freedom in isolation is meaningless. Freedom, to be real, involves the capacity to do or enjoy things in common with others, and no individual can permanently separate his own good from the common good. "We move in and out of the herd," as has been said, and truly free individual is the man who knows when



to stress his need for freedom and when to realise the full advantage of social life, with all the restrictions this implies. "Man thinks alone and acts with others," said a poet, and this is the essence and method of social life. Civil liberty is the personal liberty of individuals, either by themselves or in association with one another, to choose and pursue objects which they deem good, provided that all enjoy that liberty equally. It is both positive and negative in character and includes individual's right to free action and immunity from interference provided it does not interfere with the identical liberty of others. This means that all those essential rights we discussed earlier, must be clearly guaranteed and protected from arbitrary interference, both of other citizens and of government officials.

The civil liberty of individuals is protected against encroachment on the part of other individuals or association of individuals by the laws of the State, enforced by the organs of government, specially the police and courts. If my liberty is infringed by the action of another, the laws of the State come to my rescue and help me in the realization of my liberty. It means the adjustment of relations of the individuals through the laws of the State. The adjustment of man's relation to his fellow-men was one of the chief purposes for which the State came into being. With the lapse of time, there was further refinement and the State recognised the basic rights of man, made them definite and equally enjoyable by all classes in the State, and assured to all protection against encroachments. Thus, "Definite law, sure enforcement and equality before the law," as Gettel says, "marked the advance of civil liberty of man to man."

Protection of civil liberty against the interference of government is of comparatively recent origin. In the earlier stages of the development of the State the ruler personified its sovereignty and he exercised full control on the lives of his subjects. There could be no liberty under these circumstances. If the rulers sometimes agreed to respect certain liberties, it was done under the stress of circumstances and as soon as the stress was over unlimited and absolute exercise of authority would be the rule. With the advent of democracy a definite distinction was made between the State and government and checks were placed on the manner and extent of governmental action. The principles that defined and regulated the conduct of government set a limit to its actions as against the individual, and protected the rights and privileges of the individual, constituted the fundamental law of the State.

Every democratic State must now have its fundamental law. It may be written or unwritten. When the fundamental law is written and is embodied in a written document, called the Constitution, it clearly prescribes how government is organised, the scope of its powers, the manner in which those powers are exercised, and the general guarantees of civil liberties. The Bill of Rights, which written Constitutions usually contain, defines the sphere of civil liberties and prescribes remedies in case of their infringement. In a country, where the fundamental law is unwritten, as in Britain, the organisation of the government, the scope of its powers, the manner of their exercise and the guarantees of civil liberties are primarily the result of traditions, customs, usage and precedents or, to be brief, Conventions of the Constitution, as Dicey called

them. Fundamental law or the Constitution is, therefore, the surest guarantee of protection of civil liberty against the interference of the government.

Whatever be the nature of the Constitution, civil liberty will be at its greatest under two conditions. First, when rights of private action are clearly defined in ample terms in order to cover the widest possible range of such action, and, secondly, when the defined rights are strictly enforced by definite remedies which can be applied as speedily and effectively as possible. In Britain, the definition of civil liberty is scanty or at any rate scattered, but the remedies for the enforcement of liberties are numerous and above all effective. The Constitution of the United States contains a Bill of Rights and it further provides that "no person shall be deprived of his life, liberty or property without due process of law." The Chapter on Fundamental Rights in the Indian Constitution is more elaborate as compared with the Bill of Rights contained in any other existing constitution of importance. Another important feature of Fundamental Rights in India is that there is a special constitutional provision for their enforcement.

Liberty, according to Professor Laski, "is never real unless the government can be called to account; and it should always be called to account when it invades rights." In the United States any law or action of the national or State government can be challenged in a court of law, if it amounts to depriving a man of his civil liberty. There is no doctrine of the 'security of the State' in the United States and the legislatures cannot suspend or abridge an individual right on the ground of the security of the State. It is for the courts to decide and determine whether there is a "clear and present danger" to the existence of the social order so as to justify curtailment of civil liberty. The Constitution of India, on the other hand, imposes direct limitations on Fundamental Rights. Courts cannot question the propriety of legislation once it has been established that it is within the competency of the legislature to make such a law or in any way to modify its effect on the ground that it seeks to unduly restrict personal liberty. And Fundamental Rights, including the right of their enforcement, may be suspended during the continuance of the Proclamation of Emergency.

In Britain, no court can challenge an Act of Parliament. Parliament may alter the Constitution, yet its action cannot be legally questioned. There is, thus, no constitutional guarantee to individual liberty in Britain in the sense in which it is found in the United States, India, and many other countries having a written Constitution. Rights in Britain are determined by customs and common law and protected by impartial and independent tribunals and the Rule of Law which involves absence of arbitrary power and privileges.

Civil liberty is not absolute. It is subject to limitations in order to secure or promote the greater interests of the community. The State may protect civil liberty through its laws against interference by other individuals, or through its constitutional system against interference by any single organ of government. But the State always possesses the power, through its legal machinery, to limit and abridge or even destroy civil liberty. Then, the real guarantees of civil liberty are not the many

constitutional devices, but "what the people will stand," and what they will stand depends ultimately upon the outlook of the community. An intelligent community understands the social need of freedom. It does not fear healthy and honest criticism; in fact, it knows that if government is to be responsible it must thrive upon variety of opinions. Regimented opinion is no opinion and it cannot bring about the willing co-operation of all for proper articulation of the machinery of government. An intelligent and liberal community, in one word, "believes in freedom, and it assumes that in a free atmosphere men will, on the whole, use their freedom in a way which is not, in the long run, detrimental to the real interests of society—criticism being one of these. But beyond this it is difficult to go, nothing will make up for an illiberal public outlook and a judiciary that will yield to every pressure either of the government or of opinion."

**Political Liberty.** Political liberty is the liberty of free citizens to participate in the discussion and direction of common affairs of the free State. Laski defines political liberty as the power to be active in the affairs of the State. It means that "I can let my mind play freely about the substance of public business. I must be able without let or hindrance to add my special experience to the general barriers in the way of access to positions of authority. I must be able to announce my opinion and to concert with others in the announcement of opinion." Leacock calls political liberty as "constitutional liberty" and means thereby the right of the people to choose their government which should be responsible to the general body of the people. Gilchrist takes political liberty "practically synonymous with democracy" and gives the mass of the people not only a sphere of freedom, but also a share in authority.

Those who originally raised the slogan of liberty and fought for it actually wanted the recognition of their civil rights. But it was soon realised that mere recognition of civil rights was not sufficient to protect them against exercise of despotic authority. It, accordingly, came to be maintained that the people must also possess the power to compel the government to accept their point of view and ultimately to replace it, if it continued to act in violation of their will. This transference of ultimate authority of retaining or changing government in the hands of the people came to be known as their political liberty. Political liberty, now, signifies:

- (1) The right of citizens to elect their representatives. But all citizens do not enjoy the right to vote. Political expediency demands that some proportion of the population of the State be denied this right. In general, aliens, lunatics, children, and in some countries even women, are excluded from the right to vote, although modern tendency is to extend the grant of political right to all adults, men and women.
- (2) The right to be elected. That is to say, every citizen who possesses the right to elect representatives must also possess the right to get himself elected.



- (3) The right to hold any public office, provided a citizen possesses the requisite qualifications as prescribed by the laws of the State. The right to remain in office cannot, however, be held permanently or for an indefinite period of time. Representatives must be elected periodically.
- (4) The right of the citizens to be well-informed about all public matters and to freely discuss and criticise the policy of government. The citizens should be sufficiently vigilant about public affairs as eternal vigilance is the price of liberty.

It will appear that political liberty is realised in countries which are democratically governed. In fact, it is another name for self-government and refers to political rights possessed by the people, that is, the share of governing authority which the State confers upon certain of its inhabitants. Political liberty is also the necessary complement of civil liberty. In the absence of political liberty, civil liberty is only an illusion.

Political liberty, according to Laski, "must not be regarded as something to be attained as an end in itself. It is to be attained for the higher moral end of the perfection of humanity, and as such its course must be marked by the gradual enlightenment of the citizens."<sup>5</sup> For political liberty to be real, Laski says, two conditions are essential. First, there should be adequate facilities for all and each one should have equal access to education. But the system of education which provides separate institutions for the children of the rich and the poor is to be highly deprecated, as it trains the former to habits of authority and the latter to habits of deference. Such a division of attitude amongst citizens can never produce political freedom. Those who are consciously trained as a privileged class will be imbued with the spirit of governing others who are trained to submit to their authority."

The second condition of political liberty is the presence of an honest and free press. The press disseminates information and knowledge. For the enjoyment of political liberty it is essential that the news supplied by the press should be honest, straightforward, and unbiased so that both the electors and the representatives may have truthful material to rely upon and decide issues. But this is not the real fact. Our press skilfully omits relevant facts and deliberately perverts news. When facts are deliberately perverted and reason is choked, our judgment will be unrelated to truth. A people deprived of reliable news are, thus, deprived of the very basis of freedom. "For, to exercise one's judgment in a miasma of distortion is ultimately to go disastrously astray."

**Economic Liberty.** It has been justly said that economic liberty must precede political liberty. Liberty is meaningless when hunger, starvation, and destitution stare man at every step. Nor can there be any liberty when there is a constant fear of unemployment and "insufficiency which, perhaps more than any other inadequacies, sap the whole

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5. *Ibid.*, p. 154.

6. *Ibid.*, p. 147.

7. *Ibid.*, p. 148.

strength of personality".<sup>8</sup> The problem of tummy is, undoubtedly, the foremost.

By economic freedom we mean "security and opportunity to find reasonable significance in the earning of one's daily bread." It is the freedom from want and freedom from fear. For liberty to be real, it is essential that every citizen should be free from the constant fear of unemployment and insufficiency. He must be safeguarded against the wants of tomorrow. Economic liberty aims at the creation of that structure of society where there is sufficiency for all before there is superfluity for the few. In such a society there is no class domination. The worker is not merely the seller of labour and recipient of orders, but a producer of services who finds in his work scope for the enrichment of his personality. "Without these freedoms, or, at least, access to them, men are hardly less truly slaves than when they were exposed for purchase and sale."<sup>9</sup>

Economic liberty, therefore, implies democracy in industry. Democracy in industry means two things. In the first place, it means that workers possess certain economic rights. These rights consist in the individual's right to work, right to reasonable hours of work, and to a minimum wage, right to leisure by the regulation of hours of work, right to benefits against unemployment, sickness, accidents and old age, right to form unions and to fight for the redress of his grievances. Secondly, democracy in industry means that workers should have positive control in industry. In the absence of positive control, there is no spontaneity, initiative is frustrated and workers work mechanically. They subject themselves to the "routine" nature of work for fear of starvation. "A system built upon fear is always fatal to the release of the creative faculties, and it, is, therefore, incompatible with liberty."<sup>10</sup>

**National Liberty.** The term liberty is applied to nations as well as individuals. A nation is said to be free when it is internally independent and subject to no foreign control. National liberty exists where the community is independent and sovereign. It is another name for national independence or national sovereignty. India did not enjoy national liberty before August 15, 1947. She is now an independent and sovereign Republic free to determine her own government and free from control on the part of any other State. Pakistan, too, has become a free nation and enjoys national liberty. It is always a free nation which allows to its people real and maximum liberty. National liberty is, thus, the foundation of civil, political and economic liberty.

## LIBERTY AND EQUALITY

**Meaning of Equality.** The popular meaning of the term equality is that all men are equal and all should be entitled to identity of treatment and income. Those who subscribe to this meaning of equality assert that all men are born equal and nature has willed them to remain

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8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

so. This natural equality of man was practically recognized in the Declaration of Rights of Man (1789) issued by the National Assembly of France. It said: "Men are born, and always continue, free and equal in respect of their rights." A similar statement is found in the American Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal." But Nature has not created all men equal. Inequality is an inescapable, natural fact and it has to be accepted by society. Nature has endowed men with different capacities and so long as they differ in their wants, needs, and capacities in satisfying them, equality in its popular sense is inconceivable. Equality does not even imply identity of reward for effort. The statement, then, that all men are equal is as erroneous as that the surface of the earth is level.<sup>11</sup>

Absolute equality is, in fact, an impossible ideal. Nature itself has created so vital differences between men that no power can make and keep them equal. There are, however, certain elements of equality which must be secured and this needs a certain levelling process in the existing order of the things. The principle of equality originally was a common man's protest against the gross inequalities created by the superior claims of the nobility in ancient societies. The idea of equality has, therefore, grown out of the idea of privileges. These inequalities and privileges persist even in our own times. Inequality, as such, refers to the conditions created in society by a limited number of privileged people who have always dominated the State and used its power for their own purpose. This class of vested interests makes the fulfilment of their private desires the criterion of public good.

Equality means, first of all, that special privileges of all kinds should be abolished. All barriers of birth, wealth, caste, creed and colour should be removed so that no one suffers from any kind of social or political disabilities. There should be, in short, no difference between man and man and "whatever rights inhere in another by virtue of his being a citizen must inhere and to the same extent, in me also."<sup>12</sup> It means that I am entitled to the enjoyment of all social and political privileges to which others are entitled. My vote in the election of the representatives is as valuable and potential as that of any other. I can also become the recipient of any office of the State for which I may be eligible. To refuse any man access to authority is a complete denial of his freedom, because, "unless I enjoy the same access to power as others, I live in an atmosphere of contingent frustration."<sup>13</sup> One who lives in an atmosphere of frustration has no aspirations. He accepts his place in society, which accident of birth has given him, as a permanent condition of his life. It is in this way that the faculty of creativeness is lost and men or a class of men become "animate tools", which Aristotle described as the characteristic of the natural slave. There can be no equality in a society where a few are masters and the rest are slaves. The principle of equality, accordingly, means that whatever conditions are guaranteed to

11. Appadorai, *op. cit.*, p. 93.

12. Laski, H., *A Grammar of Politics*, p. 153.

13. *Ibid.*, p. 149.



me, in the form of rights, shall also, in the same measure, be guaranteed to others, and that whatever rights are given to others shall also be given to me.

Equality, like liberty, has a positive connotation as well. In this sense, it means provision of adequate opportunities. By adequate opportunities we do not mean equal opportunities. This is impossible. "In the modern world," says Prof. Laski, "broadly speaking, opportunity is a matter of parental circumstances."<sup>14</sup> All that is implied from the provision of adequate opportunities is that the State should provide suitable opportunities for all citizens without any discrimination for the full development of their intelligence. No one should be debarred from the ambition of his life, if he possesses the requisite ability. The principle of equality is satisfied when the State extends due opportunities to all for developing their abilities to their full stature.

Equality, thus, involves, first of all, absence of legal discrimination against any one individual, group, class or race. Next, equal claims to adequate opportunities for all, recognition of the fact that there can be no difference inherent in nature between claims of men to happiness, and especially, that no one, person or group, may be sacrificed to another. Finally, claims to a minimum of education, housing, food, and guarantees against economic insecurity.

**Content of Equality.** Lord Bryce makes mention of four kinds of equality: (1) civil equality; (2) political equality; (3) social equality; and (4) natural equality. Bryce's classification may be supplemented by (5) economic equality.

(1) **Civil Equality.** Civil equality consists in the enjoyment by all citizens of the same civil rights and liberties. All should be subject to the law and equal before the law. There is no equality, if law makes a distinction between men either according to their rank or wealth, their political opinions or their religious beliefs, or if laws are passed to benefit one class of people at the expense of another. Equality implies that all citizens should be treated alike in the matter of possession of rights. Its basis is, thus, equalitarian.

(2) **Political Equality.** Political equality means that all citizens have the same political rights, an equal voice in government, and an equal access to all offices of authority, provided the necessary qualifications are fulfilled. This implies democracy and adult suffrage. But political equality is never real unless it is accompanied by economic equality. If there are glaring contrasts in the distribution of wealth, the political life of the country will be manned by those who have the means to foot the election expenses and get themselves elected. When wealth becomes the only criterion of enjoyment of political rights, political equality is not possible. In such a society some are born to rule and others are born to be ruled. This is not a democratic ideal, because democracy rests upon the foundation of equality of men irrespective of their station in life. It accepts man as a man.

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14. *Ibid.*, p. 151.

(3) **Social Equality.** Social equality means that all citizens are equally tangible units of society and no one is entitled to special privileges. All have an equal opportunity to stand up and develop their personality. It implies no distinction in the social status of the people, because of differences in race, colour, rank, class or caste, that is, there exists no unnecessary social restraint which retards the growth of an individual and the realization of his ambition of a good and happy life. In India, there is no social equality as the society is rigidly divided into castes and free intercourse between different castes is a social taboo. The policy of racial discrimination now followed in South Africa is the negation of the principle of social equality. The division of society into different classes—the employers and the workers, the rich and the poor, the aristocratic and the plebian—is a conspicuous feature of the capitalistic society and it is a great barrier to social equality. Social equality, however, cannot be forced upon people by the laws of the State unless the sentiment of equality produces great changes in our social habits and social institutions. If the sentiment of social equality is wisely cultivated, it is sure to make a considerable addition to the realisation of social justice for which the world clamours now. But social equality is a difficult ideal to attain. It exists nowhere in the world, not even in Soviet Russia.

(4) **Natural Equality.** We have already referred to the concept of natural equality and tried to show that there is really nothing like natural equality. Nature has not willed that all men should be equal. Men differ obviously and profoundly in almost every respect beyond the mere equality of human beings. "They are," as Cole points out, "radically unlike in strength and physical prowess, in mental ability and creative quality, in both capacity and willingness to serve the community, and perhaps most radically of all in power of imagination."<sup>15</sup> It is, however, to be remembered that society can endure natural inequalities, but not unnatural man-made inequalities. The cry of natural equality is made to free society from artificial inequalities created by man himself. What the doctrine of natural equality means is that none of those inequalities is to be recognised by law as creating inequalities in rights. The law must treat all alike, keep all doors open to all, admit of no official predominance due to anything else but capacity shown by objective proofs which all may try to offer. It also means that law should work at reducing those inequalities, rather than perpetuating them, by providing those social and economic opportunities that equalise chances. Natural equality in this context may be to some extent an ideal rather than an immediate reality, but, the ideal must be taken as both desirable and realisable, as a guide for immediate practice.<sup>16</sup>

(5) **Economic Equality.** There is nothing like absolute economic equality as Bryce interprets it. He said economic equality is "the attempt to expunge all differences in wealth, allotting to every man and woman an equal share in worldly goods." Such a concept of economic equality is beyond the bounds of practical politics. Not only wants differ,

15. Cole, G. D. H., *A Guide to Modern Politics*, p. 488.

16. Solatu, R. H., *An Introduction to Politics*, p. 144.

but there is also a great difference in the capacity of men to satisfy their wants. Equality of wealth is, therefore, an unnatural conclusion, and there is no escape from it. But all men must eat, drink, and obtain shelter. These are the bare necessities of life and they are equally urgent for all. Every man, accordingly, must have equal and easy access "up to the point where human urgencies are in question."<sup>17</sup> Beyond that point equality is not possible.

Economic equality involves sufficiency for all to satisfy their primary needs. I have no right to eat cake, as Laski puts it, "if my neighbour, because of that right, is compelled to go without bread." Any social organisation which allows some to starve quietly and others to have abundance denies to man what enables him to be a man. It produces a society of social decrepits. Such a society of unequals, according to Matthew Arnold, "materializes our upper class, vulgarizes our middle class, brutalizes our lower." If we want a society of social equals, we can hope to build it only on a foundation of economic equality. The State should, accordingly, guarantee to all citizens access to the means of satisfying their primary needs. By assuring each man a minimum of sufficiency, the State guarantees him all those things without which life is meaningless. This amounts to protecting the weak and limiting the power of the strong.

Economic equality, then, means equality to the margin of sufficiency. Beyond the margin of sufficiency inequality is justified, provided it is capable of explanation in terms of social good. "Once urgency is satisfied superfluity becomes a problem of so fixing the return to service that each man can perform his function with the maximum return to society as a whole."<sup>18</sup> Equality, thus, is a "problem of proportions." It implies a certain levelling process in order to reduce the excessive inequalities of existing fortunes, or to eliminate unnatural inequalities. In a society where every man has an opportunity to satisfy his primary needs no one's personality suffers frustration to the private benefit of others. This is what justice means. Where there are great inequalities of fortune there is always inequality of treatment and opportunity. It is not possible for men, says Cole, to be socially or politically equal as long as there exist among them differences of wealth and income so great as to divide them into distinct economic classes "with widely differing opportunities in childhood to become healthy, educated, travelled and used to regard the world as a place made to suit their convenience. The slum child is not so healthy as the child whose parents can afford to give it the privileges of good food and sunlight. In the schools, the children of the poorest classes lag behind those who come from better equipped homes. Secondly, education is still a privilege reserved for a minority selected mainly on economic grounds. And there is a wide difference, for the most part, between the few who are taught from childhood the arts of command and the many whose lessons are intended to inculcate rather the duties of obedience and respect for their betters".<sup>19</sup> The real

17. Laski, H., *A Grammar of Politics*, p. 159.

18. *Ibid.*, p. 158.

19. Cole, G. D. H., *A Guide to Modern Politics*, pp. 489-90.



roots of social and political inequality are mainly economic. Economic equality, as explained above, is a panacea for our social and political ills. But can we obtain an equality of the communistic ideal? It is hazardous to conjecture about it. It is not obtainable even in Soviet Russia of our times, or in any other communistic country.

**Relationship between Liberty and Equality.** Liberty, as we defined it, is moral freedom, and equality is essential to it, for without equality, the price of liberty for me might be the denial of liberty for you. Liberty and equality both go together in claims to fundamental rights. But the two have not always and everywhere been claimed with equal fervour. On the whole, the Anglo-Saxons have seemed to place more emphasis on liberty, while the French have always sought, first and foremost, to secure recognition of the principle of equality. This difference of emphasis may be explained as the result of different political evolutions or of different national characteristics. It is also possible to explain it by saying that, in reality, one or the other has to be chosen, because the two demands are really incompatible, that, as Lord Acton said, "the passion for equality makes vain the hope of freedom."

Whether equality is a condition of liberty or is in reality incompatible with it is a question which need clearly be answered as it affects our whole conception of rights and duties. According to the Marxists thesis conditions of economic equality alone make it possible the necessary conditions of liberty. Economic equality, it asserts, can only be achieved through revolution and dictatorship of the proletariat. The dictatorship of the proletariat uses all the power at its disposal to destroy capitalism and establish in its place Socialism, that is, to re-distribute material benefits which hitherto were enjoyed by some, capitalist class, at the expense of others, the working class. For constructing a Socialist society the dictatorship of the proletariat may be invested with oppressive and autocratic powers. It may even regiment the faculties of men to a particular way of life. Once Socialism has been established, the State becomes superfluous and it must 'wither away'. The emerging society is a stateless and classless society where men will really be free. Equality is, therefore, an end to which men are led by a revolution.

But in a democratic State means cannot be divorced from the end, or to put it in simple language, "democracies assume that, in so far as it is humanly possible, they must not do evil that good may come." Freedom, therefore, is something that can be both created by free men and the citizens themselves decide both what constitutes their freedom and also the means which they will employ to achieve their end. Good means must be adopted for a good end and for the attainment of liberty a considerable measure of equality is necessary. Unrestrained freedom for every individual to satisfy his appetite for wealth and power are not the conditions of liberty. Whenever and wherever such a freedom has existed it resulted into the degeneration of the social order. Great inequalities make impossible the attainment of freedom for the less fortunate. Those who are wealthy and possess the means to control the Government constitute a class of vested interests and they use their authority and privileges in perpetuating inequalities. This hampers the freedom of those who are deprived of the opportunities they need for their self-expression

and self-development. Freedom means security and security demands removal of those inequalities that place the weak at the mercy of the strong. Equality, which aims to end the glaring contrast, is, therefore, the true basis of liberty.

Without equality, liberty is a mere mockery. Civil liberty can only be ensured when all are equal in the eye of law, the same law for all and no privileged classes or individuals exempt from its provisions. Political liberty provides equal status for all citizens and equal opportunities for their participation in the affairs of the State. It raises the common man on the pedestal of political glory. A society in which there exist gross inequalities in property can assure neither civil nor political liberty. Liberty consists in reciprocity, or, as Aristotle has said, friendship. There can be no friendship, that is, fellow-feeling, among people having unequal standards of living, education and culture. "If liberty means the power of expansion in human spirit, it is rarely presented save in a society of equals. Where there are rich and poor, educated and uneducated, we find always masters and servants." There can be no liberty for servants who are ever recipients of orders.

Inequalities of property also inevitably bring inequalities of treatment and right. There is no justice for poor in a society of unequals. Equality in justice is a primary condition of justice. A magistrate who convicts a thief but acquits the one who is rich, ascribing the guilt of the latter to a nervous disease, does so because of differences in the economic status of the two, though the nature of offence in both the cases is the same. Such differences in the administration of law "are dependent, not upon the law itself, but upon the social results of the inequality of wealth." Things seem wicked in the poor which are not wicked in the rich. Only a movement towards the equality of wealth can remove such injustices. All those countries which have moved towards the attainment of real liberty have, in fact, striven to remove economic inequalities. The Directive Principles of State Policy contained in the Indian Constitution declare the ideal of the Welfare State and emphasise that the regulatory State of the past has given place to the service State of today. Article 38 of the Constitution clearly prescribes that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." The State shall, in particular, direct its policy so that wealth, its sources of production and its means of distribution shall not be concentrated in the hands of the few, but shall be distributed so as to subserve common good.

Liberty and equality are, therefore, not incompatible. Equality is an aid to liberty. Even Lord Acton did not find equality incompatible with liberty. What he found incompatible was "the passion for equality." And if the equalitarian communities, utopian or communistic, have been found unworkable and subjected to criticism, it is because equality is regarded as an end rather than a means to an end. If equality becomes a passion instead of an instrument, then liberty may be diminished by equalitarian measures as Marxism suggests.

## SAFEGUARDS OF LIBERTY

It follows that liberty exists and thrives in a democratic State and the citizens of a democratic State are thinking human beings fully conscious of their rights and duties. A citizen of a democratic State makes an equal contribution towards the discovery of the best techniques of democratic government. Vigilance is the price of democracy. The people should have the conviction and courage to protest and even resist if a wilful invasion is made on their liberties either by any individual or the Government. Mere democratic institutions are not enough to safeguard liberty. The grant of rights and the existence of appropriate institutions to enforce them constitute only half the battle. Victory comes only when we are educated to use our rights properly. This is the first safeguard of liberty.

Secondly, liberty can be best secured when there is a mutual co-operation between the Government and the people. In order to create a climate of trust and mutual co-operation, it is essential that the liberties of the people are incorporated and defined in the Constitution of a country. If the Government or any individual attempt to make encroachments on the liberties of the citizens, they can appeal to the written law and seek proper redress. The Constitution of a country is the custodian of the liberties of the people and provides necessary safeguards against any possible encroachment.

In countries where the Constitution is essentially unwritten and there is no Bill of Rights providing specific rights, the judiciary safeguards the liberties of the people. Britain is the classical example of such a Constitution and judiciary in that country has proved the unfailing guardian of the rights of the people. It implies independence and impartiality of the judiciary and existence of the Rule of Law. If the people can secure speedy and impartial justice and all are equal before law and the same law is applicable to all and there is nothing which can be characterised as arbitrary action, their liberty is duly guaranteed. Montesquieu maintained, "it is principally by the nature and proportion of punishments imposed by law that liberty is established or destroyed."

Then, liberty can best flourish under a democratic form of government. In democracy political power rests with the people. The rulers are their nominees and they remain in office so long as the people wish them to continue. This is a useful safeguard of liberty. But democracy by itself is no automatic guarantee unless people possess the habit of tolerance and the majority party respects the liberty of the minorities. The majority party should not be prompted by sectional interests disregarding the interests of the minorities. Nor should the minorities always suspect the intentions of the majority and be at perpetual political animosity with the latter. There must be, on both sides, moderation and the spirit of give and take, and agreement to differ, which is really a form of unity. "Our political machinery," once said Lord Balfour, "supposes a people so fundamentally at one that they can afford to bicker."

Freedom, according to Laski, cannot be achieved for the mass of men in the presence of special privileges guaranteed to a small section



of the community. Freedom for all to all places of authority is real liberty. Those who are denied the opportunity to authority assume the subordinate position of obedience and those who enjoy the privileged position of authority struggle to maintain their power and prestige and tend to justify their retention by the most specious and fallacious kinds of arguments. Whenever men become only recipients of orders they lose their individuality and ability to realise their own good. They cannot appreciate the implications of liberty and the means to safeguard their rights. Moreover, there can be no liberty where the rights of some depend upon the pleasure of others. No person or group of persons, therefore, should be in a position to encroach upon my liberty and rights which belong to me as a citizen.

Finally, liberty can best be secured and preserved when the action of the State is unbiased. It means that the machinery of the State should move promptly and impartially neither to the advantage of some nor to the disadvantage of others. This ideal, however, is not always possible to be realised. But let us, once again, repeat that the price of liberty is eternal vigilance and the secret of liberty is courage. If people are vigilant and jealous of their rights, they will not submit to any illegal interference and biased action of the State. If people have the courage to sacrifice and bear all consequences for the vindication of their rights, there will be the least violation of their liberty. Freedom-loving spirit of the people, therefore, is the best safeguard of liberty, that is, liberty exists in the mind and soul of men, or not at all. "There are nations," writes De Tocqueville, "which have tirelessly pursued freedom through every kind of peril and hardship. They loved it, not for its material benefits; they regarded freedom itself as a gift so precious and so necessary, that no other could console them for the loss of everything else. I attempt no analysis of that great emotion for those who cannot feel it. It enters of its own accord into the generous hearts God has prepared to receive it; it fills them, it inspires them; but to the meaner mind which has never felt it, it is past finding out." Various constitutional devices of safeguarding liberty are only the external aspects of freedom. Love for liberty is its real safeguard and those who love it will sacrifice to safeguard it.

### SUGGESTED READINGS

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|-----------------------------|--|
| Barker, E.                  | : <i>Principles of Social and Political Theory</i> , pp. 130-67. |
| Barker, E.                  | : <i>Reflections on Government</i> , Chaps. I, II.               |
| Bryce, J.                   | : <i>Modern Democracies</i> , Vol. I, Chap. VI.                  |
| Burgess, J. W.              | : <i>The Reconciliation of Government with Liberty</i> .         |
| Bury, J.                    | : <i>History of Freedom of Thought</i> .                         |
| Cole, G. D. H. and Margaret | : <i>A Guide to Modern Politics</i> , pp. 478-95.                |
| Gettel, R. G.               | : <i>Introduction to Political Science</i> , Chap. X.            |
| Gilchrist, R. N.            | : <i>Principles of Political Science</i> , Chaps. VI, VII.       |
| Lacy, G.                    | : <i>Liberty and Law</i> , Chaps. II-IV.                         |
| Laski, H. J.                | : <i>A Grammar of Politics</i> , Chaps. IV.                      |

- Laski, H. J. : *Liberty in the Modern State.*
- Laski, H. J. : *The Dangers of Obedience and Other Essays,*  
pp. 207-37.
- Leacock, S. : *Elements of Political Science*, Chap. V.
- Lippman, W. : *Public Opinion.*
- Lord, A. N. : *Principles of Politics.*
- MacKinnon, J. : *History of Modern Liberty.*
- Mill, J. S. : *On Liberty*
- Seeley, J. R. : *Introduction to Political Science*, Lectures V,  
VI.
- Shaw, Bernard : *Everybody's Political What's What?* Chaps.  
V, VIII.
- Tawney, R. H. : *Equality*

## Relation Between the Individual and the State—(Contd.)

### LAW

**Laws are the rules of life in the State.** No community can live without rules. Rules are necessary to ensure the minimum uniformity of conduct, the behaviour in a desired manner, without which social life would be impossible. The rules which represent a pattern of social behaviour and are expressed in customs, traditions, fashions and usages are called social rules. The sanction behind them is the will of the community and depend for their effectiveness on its support. Disobedience of social rules is followed by punishment either in the form of ridicule or social disapproval and even ostracism. There is no positive penalty attaching to social rules. It is the criterion of the law of the State. "The law of the State alone," says MacIver, "in a demarcated and advanced society is coercive."

We speak of the State as sovereign. Similarly, we speak of the State as law-giver, that is, it makes laws. And one may well define the State with Woodrow Wilson as "a people organised for law within a definite territory." The rules of behaviour which the State makes for its members are called laws, disregard of which meets with a penalty which is enforced by the State's machinery of power, that is, government through which the State exercises its sovereign authority. A law, therefore, prescribes general conditions of human activity in the State. It is a law, because it is declared to be so by the State through the proper law-making organ, whether it be the will of the autocrat ruler, or an act of parliament. "It is not the issuing of law that makes the State a State; it is the force of the State that makes law," as Hocking puts it. What distinguishes a law from a social rule or a group rule is that the former is enforceable by the machinery of the State backed by the authority of its sovereign power. Whatever is not so **enforceable** is not law. Laws of the State are applicable to all without exception in identical circumstances. There can only be one body of law within the State.

We, then, come to the following conclusions. First, the general conditions of human activity which the State prescribes for its members are called laws. Secondly, a law is law if it is enacted by a proper law-making authority. Thirdly, law is definite and precise, reference



can be made to it chapter and verse. Fourthly, there can be only one body of law within the State. Law is universal in scope and it is applicable to all without exception in identical circumstances. Finally, laws are enforced by the authority of the State and their violation is followed by penalties politically determined and applied. Once the law has definitely and finally spoken there is no appeal except to force. A law is, therefore, known by its finality and manner of enforcement.

### MODERN SCHOOLS OF JURISPRUDENCE

There has been a sharp cleavage between different schools of jurisprudence or the science of law. Each school looks at it from its own point of view and lays emphasis upon the sources of law and its enforcement. Among the most important modern schools of legal study are the following:

1. **The Analytical School.** John Austin may be regarded as the founder of the Analytical School, though he drew the inspiration from Hobbes, and Bentham, his teacher. To him law is a command given by a superior to an inferior and enforced by material sanctions. Every positive law is a creation of the sovereign power, which either established it directly or authorised some subordinate person or body to establish it, and penalties are incurred for its disobedience. The Analytical School, thus, lays emphasis that the sovereign is a determinate superior, what the sovereign commands is law, and disobedience of such commands is accompanied by punishment.

This conception of law has the attraction of simplicity and consistency. It also seems to accord with the citizen's everyday experience. Let us illustrate it. Under the authority of the Constitution, Parliament of India makes law of income-tax and provides that disobedience to its commands shall be punished by fine or imprisonments or both. Under the authority given to it by the Municipal Act, the Municipal Committee, say, of Patiala prohibits the parking of cars and other vehicles in certain congested areas and prescribes the punishment for violation of its bye-law. Both these cases answer to the Austinian formula.

Austin's doctrine has been subjected to unsparing attacks. His critics times out of number ask how customs can be reconciled with the theory of command, and where we can find a supreme law-giver in primitive society. But both these objections do not affect the validity of Austin's position. Primitive society lies outside his domain. His sovereign is found in an independent political society, that is, the community which has achieved Statehood and which lives under a duly established and recognised government. To the pre-State custom, he gives the name of "positive morality". With respect to common law of England, Austin contends that it is a judge-made law and that the judges are agents of the sovereign power acting in its name and subject to any restraints it may impose. What the sovereign power does not forbid, Austin says, it accepts; what it accepts, it commands. Sir Henry Maine characterised Austin's method of assimilating the common law to a command as "a mere artifice of speech" and a "mere straining of language." But it is a fact that judges in Britain "acted for the king in

Norman and Plantagenet times and that their decisions were effective only as he enforced them."

The Analytical Theory of law can best be appreciated once it is recognised that Austin was a lawyer and his theory is a legal theory. He discovers in the State a person or body of persons which in the last resort has the *de jure* right to issue commands and fix punishment for violation of the commands. "But he does not claim that legal right is tantamount to actual power, that form and substance are the same." He is not oblivious that the electorate, when one exists, does impose limitations on the legal sovereign. In fact, he points out that "in any State, even when the government is autocratic, the sovereign is restrained by the opinions of the people and must defer to 'the principles and maxims' held by the bulk of them or by the most influential portion." The main defect of Austin was, as Sait says, that "he erred in thinking of the influence of masses as negative rather than positive." Law must be the expression of the will of the people, if it can adequately serve its purpose. Moreover, the Analytical School makes law rigid. It is the letter of the law which must be followed and there is nothing to lubricate its application. It also breeds conservatism as it does not cater to the needs of the people and the times. Nor does it run into the past to establish its natural evolution. Gettel has correctly said that "Analytical jurists tend to regard the law as static rather than progressive, and they are not interested in its historical evolution. As a result, they have sometimes reached absolute conclusions without examining an adequate material."<sup>2</sup>

2. **The Historical School.** The Historical School of jurisprudence found its origin in Germany at the beginning of the nineteenth century. Frederick Von Savigny was its most famous apostle, though not its founder. Sir Henry Maine was another eminent follower and supporter of this school.

The Historical School regards the people themselves as law-makers through the formation of habit and custom. Its sanction is not the coercive authority of the State, but a general sense of right of the society. People obey law as a matter of habit because, in their opinion, it conforms to their standard of right. Acceptance has, therefore, always been the theory and fact of law. "No rule of law was ever successful or ever endured," says Zane, "unless it received practical general acceptance among the whole body of people, for the simple reason that universal human experience has demonstrated that a rule of law not accepted by any considerable portion of the people can never be enforced.... Whatever the means by which law is recognised, whether it be the legislative enactments, by decisions of courts, by rescripts of rulers, law is in fact law only when it is cheerfully accepted and gladly obeyed by the great mass of the social body. Acceptance by the community is needed to breathe life into the edict of the harshest despot.... Government may superficially appear to make law as Hobbes and Austin mistakenly supposed, but it is the acceptance of the rules by society that makes laws and government."<sup>3</sup>

1. Coker, F. W., *Recent Political Thought*, p. 503.

2. Gettel, R. G., *Introduction to Political Science*, p. 179.

3. *The Story of Law*, p. 271.

The advocates of the Historical School go to the primitive society in order to explain the nature of law. The conduct of the people in the primitive society, they assert, was governed by customary rules, which were rigidly obeyed by them notwithstanding the absence of any command of the sovereign. The customs so observed and followed scrupulously by the succeeding generations became the social habit and a pattern of social behaviour. What governed the conduct of men in primitive times has continued, and will continue, they say, to govern it at all times and under all conditions. "Human nature is not likely to undergo a radical change, and, therefore, that to which we give the name of law has been and still is and for ever continue to be custom." No legally constituted law-making authority, however absolute its power, can disregard the weight of customs and the pre-existing customs are the standard of laws.

Thus, law, according to the Historical School, is self-created and self-executed. It is not the deliberate creation of the law-maker, but the result of the slow development of society through centuries. The function of the State is not to create law, but to realise and enforce it. Legislation can be effective only when it is reinforced by customs supplementing and clarifying it and the punishments which it prescribes in case of disobedience are in conformity with the established habits of the people. No legislative authority, whatever be the extent of its legal power, can make or abrogate customary law. But the Historical School errs in reducing the element of command to a "metaphor". They insist that the rulers adjust their wills to the wills of the ruled and command only. Moreover, the adherents of this School tend to be conservative when they view law less as a matter of deliberate legislation than as an evolution within the social body. Their reverence for the past stresses legal history rather than the content of law and what law should really aim at.

3. **The Philosophical School.** The Philosophical School is not concerned with what the actual law of the past and the present is. Their effort is to develop the idea of justice as an ethical principle and consequently to create an ideal system of law. In the eighteenth century they put their faith in the law of nature which could be discovered by human reason. In the nineteenth century they engaged themselves in the metaphysical discussions of the existing law and in attempts to create a perfect system of law in codes and legislation. In the twentieth century they devoted themselves to social interests and ideals and to the formulation of theories of social justice. The jurists of the Philosophical School have always considered law as an abstraction and based it upon abstract ethical principles of justice. A law, as such, is removed from objectivity whereas it ought to be definite and precise capable of universal application. Idealism must be blended with realism.

4. **The Comparative School.** Another School of jurisprudence, known as the Comparative School, is of modern origin. Its exponents adopt the method of examining and comparing the legal systems of the past and the present, and arrive at generalisations. They also draw upon other Social Sciences for their material for proper authentication and reliability. Although the programme of this School is ambitious and sufficient headway has been made to our knowledge of law, but much yet remains to be done. Comparisons are, no doubt, valuable aids and



they bring us nearer to the truth. But if law is really to be the manifestation of the will of the people, it must be in conformity with the genius of the people concerned. No wholesale importation from outside can serve the desired purpose and fulfil the needs.

5. **The Sociological School.** The Sociological School, the most prominent representatives of which are Duguit, Krabbe and Laski, describe the "orthodox" conception of law as a futile truth. They argue that law is not really made by an organised body of men. They admit that there are definite agencies in a society issuing commands or making decisions which are normally obeyed by the bulk of the community. But all such commands or decisions do not deserve to be regarded as laws. Some other quality is essential to give these rules the character of law. Law, according to Duguit, is the name for the rules of conduct which men observe while living in society. They obey these rules of conduct not because they are commanded and are accompanied by punishment, but because they are the conditions of social living. Without obedience to these rules life is not worth living. All of us are conscious of these rules of life which enable society to survive. Every man is, thus, impelled by self-interest to obey them. He knows instinctively or learns from experience what life of living together means. Consciousness of this fact accounts for social solidarity and it is the duty of the State to sustain such rules. Likewise, it is the duty of every individual to observe all such rules which help to realize social solidarity and abstain from all such acts as are detrimental to its growth. Laws, in brief, "in the fundamental sense, are the rules of conduct which normal men know they must observe in order to preserve and promote the benefits derived from life in society." The sanction of law, Duguit asserts, is primarily psychological "resting in each individual's awareness of the social approval or reprobation of his conduct according to its conformity or non-conformity to the fundamental social rules."

Krabbe explains law according to the source from which it springs. It is the sum-total of all those rules, general or particular, written or unwritten, "which spring from men's feeling or sense of right." He holds that law is above and, in origin, independent of the State. He rejects the idea of State sovereignty and the only theory which he is willing to recognize is the sovereignty of law. Law is, accordingly, independent of and superior to the State. Krabbe defines law as "the expression of one of the many judgments of value which we human beings make, by virtue of our disposition and nature." Law is, therefore, what is just and good from our standard of value and judgment. It is not a matter of external legal authority, but an internal human matter. It is obeyed, because it is just and good and not because of fear of punishment which its disobedience involves. The source of law, according to Laski, is the individual consenting mind. People obey it as it satisfies their desires. A good law, in his opinion, "is a law which has, as its results, the maximum possible satisfaction of desire; and no law save a good law is, except in a formal sense, entitled to obedience as such." He, thus, puts the source of law where it most truly belongs—in the individual consenting mind.

It will appear that the jurists of the Sociological School hold diver-

gent views on many points. But all believe that law is the product of social forces and should serve social needs. They do not concern themselves with the abstract theories, but judge the law by its results and find its sanction in the social needs that it serves. And without any reservation they attack the idea of a sovereign State as a creator of law. It is possible, they point out, to conceive of a condition of society in which there is law and no State, but it is not possible to conceive of a State in which there is no form of law. The purpose of law is to serve society and the purpose of the State is to enact and promulgate it in order to achieve the socially desirable ends. Gettel has cogently summed up what the different Schools of Jurisprudence claim and explain. He says, "In contrast to the analytical jurist, who found the sanction of law in the command of the State, to the philosophical jurist, who found its sanction in its inherent justice, and to the historical jurist, who found its sanction in established habit and custom, the sociological jurist finds the sanction of law in the social needs and interests that it serves."

**6. Marxian Concept of Law.** The Marxian concept of law is entirely opposed to the Schools of Jurisprudence hitherto considered. Law, according to Marx, is intimately associated with the nature of the State. He does not accept the view that law is the expression of the will of the people and reflection of the principles of social justice. It is, on the other hand, merely an expression of the will of the State, the expression of the material form of life in that State, and in a class society it is the will of the ruling class. According to Vyshinsky, "Marxism-Leninism gives a clear definition (the only scientific definition) of the essence of law. It teaches that relationship (and, consequently, law itself) are rooted in the material conditions of life, and that law is merely the will of the dominant class elevated into a statute." In a Capitalist State, the law is only the tool of the State to maintain and safeguard the interests of the capitalist class, a dominant group in society. In a Socialist State the workers are the ruling class and, thus, law must be the safeguard of the proletarian State against the enemies of Socialism and a tool for the construction of a Socialist Society.

There is an element of truth in what Marx says, but it is not the only truth. Marxian view of law does not accept other refinements connected with the State and law. Moreover, law for Marx is a vehicle for destroying Capitalism and constructing Socialism. As soon as it achieves its purpose the State "withers away". We do not accept this conclusion. For us, the State is the life-breath of human existence and whatever the shape a government may take, the State shall ever endure. Its laws hold the society together for the promotion and achievement of the all-round happiness of man.

**Conclusion.** Our conclusion regarding the nature of law is related with the rational needs of man in the State. No single theory adequately explains the concept of law. There is substantial truth in what each School of Jurisprudence advocates. Law is not entirely a command of the determinate human superior and based upon force. Nor can the sovereign command and enforce anything which is repugnant to

the will of the community. It would be also wrong to say that all law finds its origin in the customary behaviour of the people and the sovereign can command and enforce nothing which is not acceptable to the masses. A customary law is stationary and it does not cater to the needs of the people and realities of human life. Its source is the antiquated past and out-moded customs. If law is to really serve its purpose, it must be a progressive and expanding force and able to adjust according to the social, moral, religious and economic needs of the people. The Jurists of all Schools now generally regard law as the instrument of human welfare. They consider not only what the laws are, but also what effects "they have produced in the past, how they operate today, and how they may be improved by deliberate human effort." What a law may order and what it may prohibit is what appears to us just and unjust, good and bad. But if law is to be obeyed by all, there must be some compulsion behind it. Compulsion has two aspects, physical and ethical compulsion. The physical compulsion is to be found in the organised force of Government. But the root of obedience to law is not coercion; it is the will to obey. It cannot, however, be denied that law takes the form of an imperative.<sup>5</sup> It is an imperative in the sense that it must be obeyed by all and in order that it must be obeyed by all, it should be accompanied by physical compulsion. Even the Pluralists admit the compulsive nature of law, provided it coincides with the moral purposes of the State.

Two definitions of law, which are widely quoted, may be noted. The first is the one given by Professor Holland. He says, "A law is a general rule of action taking cognisance only of external acts, enforced by a determinate authority, which authority is human and among human authorities is that which is paramount in a political society; or briefly, a law is a general rule of external action enforced by a sovereign political authority." This definition is a legal analysis of law pure and simple. Woodrow Wilson's definition is more logical as it harmonises the analytical point of view of law with the historical point of view. "Law," according to Wilson, "is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government."

### THE SOURCES OF LAW

Law, like the State itself, is the product of history. In every country it has passed through various stages of development and several factors have contributed to its evolution. All these factors are described as the "sources" of law which may be outlined as follows:—

1. **Custom.** Custom is one of the earliest sources of law. In the primitive society all disputes were decided in accordance with the prevailing social customs. In the beginning, when the social organisation was simple, customs were based on the general usage of the family, clan or tribe. No one can say exactly when and how custom arose, "except that it was shaped by the co-operative action of the whole community and not by any kingly, or legislative command".<sup>6</sup> But one thing

5. MacIver, R. M., *The Modern State*, p. 21.

6. Woodrow Wilson, *The State*, pp. 69-70.



is clear that customs are accepted and followed as a matter of habit. Their sanction is utility or the general desire of men for order and justice. Sometimes people choose to do a certain thing as a matter of convenience. When it is repeated, it becomes a habit and passes from one generation to another till its utility is lost to the community. Sometimes a custom may grow accidentally and people begin following it.

The various Schools of Jurisprudence are in substantial agreement upon the importance of custom as a source of law. Customs are not laws in the political sense of the term. But when the State recognizes these customary rules as binding, they acquire the status of law. No State can afford to ignore the customs of the land, not even conquerors who impose new legal systems on defeated countries. If it does, the people who follow these customs will revolt against the authority of the State. "In the great book of law", says MacIver, "the State merely writes new sentences and here and there scratches out an old one. Much of the book was never written by the State at all, and by all of it the State itself is bound, save as it modifies the code from generation to generation. The State can no more reconstitute at any time the law as a whole than a man can remark his body." The common law of England consists mainly of customs and the courts take due cognizance of it. Customary law is also an integral part of the legal framework in India.

2. **Religion.** In the primitive community custom was law and law was religion. Law and religion were so inextricably mixed up that all rules of life had a religious sanction. The institution of, first, the magician and, then, the priest-king, in the early stages of the development of the State, is a clear illustration of the relation between religion and politics. "Indeed," as Woodrow Wilson points out, "the early law of Rome was little more than a body of technical religious rules, a system of means for obtaining religious rights through the proper carrying out of certain religious formulas."<sup>8</sup> Even now the most influential basis of the Hindu Law in India is the code of Manu. The Mohammedan law derives its origin from the *Shariat*.

3. **Judicial Decisions.** Gettel says that the State "arose not as the creator of law, but as the interpreter and enforcer of custom." When men live in society disputes are sure to arise. In primitive society disputed points were referred to the wisest men in the community and their decisions were accepted and made precedents for similar cases. When social organisation became more complex and tribes intermixed either for purpose of trade or matrimony, conflict of customs became more usual. At that time necessity was felt to supplement custom by interpretation. Whenever custom failed to give a just solution or was obviously unfitted to the case dispute was decided according to commonsense. Such deci-

7. MacIver, R. M., *The Modern State*, p. 478.

8. Woodrow Wilson, *The State*, p. 71. "In early Rome, pontiff and judge were one and jurisprudence was *rerum divinarum at. que humanarum notitia*. Religious observance was an integral part of that social order which it was incumbent on the state to maintain and defend." MacIver, R. M., *The Modern State*, p. 101.

9. Gettel, R. G., *Introduction to Political Science*, p. 171.

sions became judicial precedents. In the beginning they were oral and unwritten and passed from generation to generation by tradition. But in order to make them more definite they were later reduced to writing. In Britain, before the rise of Parliament, judges went on circuit and were responsible for evolving uniformity in the law. By comparing decisions and by basing new decisions on preceding ones, they developed the Common Law.

This was not a characteristic only of early law. In our own times a judge while applying law interprets it, and in doing so he modifies or expands it either subconsciously or deliberately. Customs too, are to be fitted to dynamic conditions of society and their rigidity lubricated by the progressive social forces. Even a written law requires filling in the gaps. This is done by judges, and Justice Holmes gave us a bare truth when he said that judges do and must make laws. Thus, law in its most characteristic form is the case-law or judge-made law.

4. **Scientific commentaries.** Scientific discussions by eminent jurists also modify and develop law. In every country greatest importance is attached by both judges and lawyers to the opinions of legal luminaries. The jurists collect and arrange in logical form past customs, decisions, and law. They discuss and elaborate the existing law and make it clear where it is ambiguous. While doing so, they express their opinions as to what the law ought to be and its effect on society. On the basis of the past and the present law, they are able to arrive at general principles which may guide future legislation and indicate in broad lines the gaps that need filling in. When a judge accepts the opinion of the jurists, it becomes a part of the existing law. The opinions of the commentators are not decisions. They are only arguments. When these arguments are repeatedly recognized they amount to accepted decisions. To sum up: "The commentator, by collecting comparing, and logically arranging principles, customs, decisions and laws, lays down guiding principles for possible cases. He shows the omissions and deduces principles to govern them."

5. **Equity.** The term equity means equality, fairness or justice. The function of a judge is to administer justice. But law can never fit in every case. At many points it may be silent and at others it may be ambiguous. When the existing law does not provide any relief, principles of equity are applied and cases are decided according to commonsense or fairness. Moreover, positive law, with the lapse of time, becomes unsuitable for new and changed social conditions. To make it suitable, either the law should be changed by the law-making authority, or there should be some informal method of changing it. "Equity is an informal method of making new law or altering old law, depending on intrinsic fairness or equality of treatment."<sup>10</sup> Thus, equity is intended to provide relief where the existing law affords none. It aims at securing equality or justice and it is based on what earlier writers used to describe as the law of nature, that is, law guided by reason.

The interference of equity with law, according to Sir Henry Maine, is open and avowed.<sup>11</sup> Equity not only supplements law, but it also makes

10. Gilchrist, R. N., *Principles of Political Science*, pp. 161-62.

11. Maine, H., *Ancient Law*, p. 28.

law flexible. It is an informal method of making new law and altering the old one. Equity too, is a kind of judge-made law. But there is one important difference between the two. In case-law, the judge interprets the existing law. In equity, he adds to the law what is missing therein and creates a new one in order to make it suitable to the changed conditions. Equity, in brief, includes such principles as the following:—

“Equity will not suffer a wrong to be without a remedy.

He who seeks equity must do equity.

Delay defeats equity.

Equality is equity.

Equity looks to the intent rather than to form.”

6. **Legislation.** In addition to selecting customary usages for enforcement, Kings issued decrees concerning new matters. This practice was the source of legislation, which became the primary concern of the legislative assemblies with the emergence of a representative government. But the approval of the King or President, is as much there now as it was in the past.

Legislation is, now, the most prolific and direct source of law. Law is regarded as the expression of the will of the people and the will of the people is expressed through legislative assemblies which are representative bodies. All other means of making laws have now been swallowed up by this modern method of legislation. Custom and equity are being replaced by definite legislative acts. The codification of law has limited the scope of judicial decisions, and scientific commentaries are used simply to discuss cases. Legislation has, thus, tended to supplant other sources of law. But we cannot ignore the practical utility of customs, equity, religious practices and judicial decisions. Though all these forces have not remained direct sources of law, yet they constantly influence its formulation.

Woodrow Wilson has beautifully expressed his views on the process of development of law. He says, “Custom is the earliest fountain of law but religion is a contemporary, an equally prolific, and in the same stages of national development of an almost identical source. Adjudication comes almost as authority itself, and from a very antique time goes hand in hand with equity. Only legislation, the conscious and deliberate organisation of law, and scientific discussion, the development of its principles, await an advanced stage of its growth in the body politic to assert their influence in law-making.”

### VARIOUS KINDS OF LAW

Broadly speaking, there are two distinct kinds of law—National Law, and International Law. National Law extends over the territory and people of the State. Within the sphere of the State there are two kinds of law. One, that which governs the State, and, the second, law by means of which the State governs its people. The former is called the **Constitutional Law** and the latter the **Ordinary Law**.

**Constitutional Law.** Constitutional Law is fundamentally distinct from the Ordinary Law. According to Dicey it includes “all rules which



directly or indirectly affect the distribution or the exercise of power in the State", and which "are enforced by the courts". Constitutional Law, therefore, defines the organisation of the State, determines the functions exercised by different departments of government, and establishes the relationship between the rulers and the ruled. Constitutional Law may be either written or unwritten. It may be the result of deliberate effort of a body—like the Constituent Assembly especially convened for the purpose—or it may be the product of history and may consist largely in a mass of customs, usages, and judicial decisions. Since the whole of the Constitutional Law cannot be unwritten, therefore, a part of it may consist of laws passed by the Legislative Assembly of the country and enacted from time to time.

**Ordinary Law.** "The State is both the child and the parent of law." The Constitutional and the Ordinary Laws have different characters and have different sanctions. Ordinary Law is made and enforced by the State, and it determines the relations of the citizens to the State and to one another. The courts take cognizance of this law alone, apply it in deciding cases of dispute, and the government enforces obedience to their decisions.

Ordinary Law may, for proper comprehension, be divided into Public Law and Private Law:

(1) Public Law regulates the relations of the individuals to the State. It is made by the State for and on behalf of the community. It determines, "within its range," as MacIver says, "not so much the order of the State as the order of society." The State punishes the offender against it, using if necessary the force of its authority.

Public Law may further be sub-divided into Administrative Law and General Law. Administrative Law defines in detail the manner in which the government through its various organs exercises the powers that are conferred upon it by the Constitutional Law. In the narrower sense, it is that part of Public Law which fixes the organization and determines the competence of organs that administer the law, and indicates to the individual remedies for the violation of his rights.<sup>12</sup> There prevail two systems to deal with the cases arising between private individuals and officers of the government acting in their official capacity. One is, what Dicey called, the Rule of Law, as it is obtainable in Britain, the United States of America, India and the other Commonwealth countries. The other is the Administrative Law administered in separate Administrative Courts and as prevailing in the Continental Countries of Europe. We will deal with both these systems in the Chapter of Judiciary.<sup>13</sup>

A General Law determines the relation of private citizens to the State. It is necessary to distinguish between General Law made by the law-making authority, and decrees or orders issued in pursuance of the General Law. A General Law fixes some general and permanent rule of conduct whereas a decree or order is the particular application

12. Gettel, R. G., *Introduction to Political Science*, pp. 184-185.

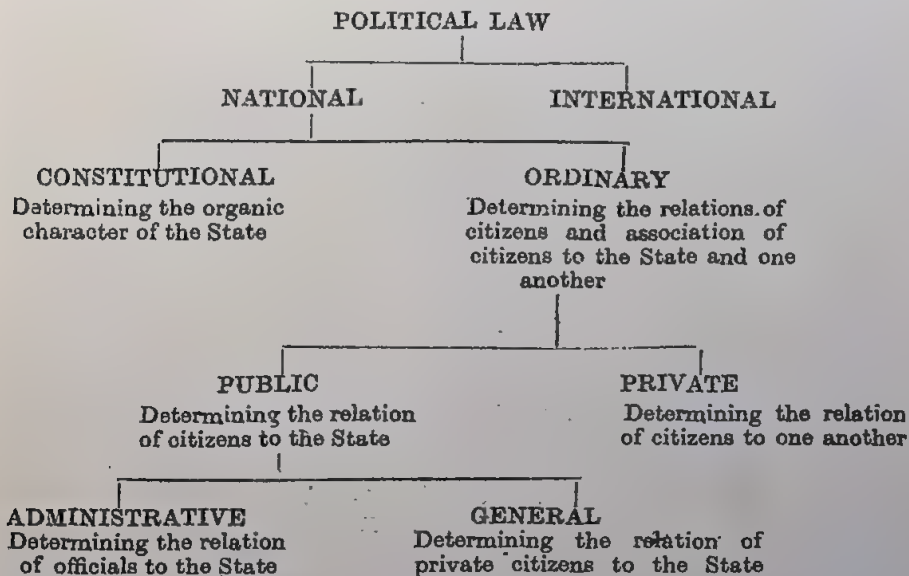
13. Chap. XX, *Infra*.

of a General Law at a particular time. For example, a law will decide as to what the qualifications are for holding a certain position in the State; a decree or order will appoint a particular individual.

(2) Private Law regulates the relations among individuals. It prescribes the conduct of man in society in his relation to others, and guarantees to each the enjoyment of his rights. In Private Law the parties concerned are private persons and the State is the arbiter. The State, however, does not regulate all the relations among persons, but only those which in its opinion are of such social importance as to need legal regulation, for example, laws concerning property, contract, marriage, torts, etc. This is how Holland distinguishes Private Law from a Public Law. "In Private Law," he says, "the parties concerned are private individuals above and between whom stands the State as an impartial arbiter. In Public Law also the State is present as an arbiter, although it is at the same time one of the parties interested."

Municipal Law is an ancient term which means the law of a particular State and Public Law and Private Law, combined together, are called Municipal Law, though we preferably call it National Law. In contrast to the Municipal or National Law there is also a body of rules which regulate relations between States and it is called International Law. We shall deal with this kind of law in the following Chapter.

The following table borrowed from MacIver shows the classification of the types of law:<sup>14</sup>



### LAW AND MORALITY

Law is the subject of study in Political Science. Morality forms the subject-matter of Ethics. There is a close affinity between Political

14. MacIver, R. M., *The Modern State*, p. 290.

Science and Ethics as both deal with man as a moral agent in society.<sup>15</sup> The end of the State is the promotion of general welfare and moral perfection of man in society. It exists for attaining those moral values which make man the best of himself. In simple words, every State endeavours to promote those physical and social conditions which are necessary for the expression and development of a free moral personality. The actions of the State have, accordingly, an integral connection with the moral end of man. So intimate is the connection between the two that ancient writers confused law with morality.

**Distinction between Law and Morality.** But a definite line of demarcation can be drawn between the two. Law and morality differ from one another in content, sanction and definiteness. Morality embraces the whole life of man, his thoughts and motives as well as his actions. Law is concerned only with the outward acts of man and it has nothing to do with his thoughts and motives. Thoughts and motives when only exhibited in actions come within the purview of law. To tell a lie or to be angry are immoral acts, but unless I cheat some one by telling a lie, I am not guilty of doing anything illegal. Similarly, as long as I confine my anger to my own self, or simply express it in words, I do not do anything contrary to the laws of the State. But, if I inflict an injury on the person of some one in a fit of anger or abuse and defame him publicly, my action is against the law of the State and I can be punished for its breach.

Law is enforced by the government and its disobedience is visited with punishment. Behind it is the sanction of force. The violation of a rule of morality, on the other hand, does not mean physical punishment, although it may mean social disapprobation, which may be severer in consequences than even physical punishment. Moral condemnation may socially damn a person, but it does not mean physical punishment. The sanction behind morality is that of public censure. Law is, thus, a matter of force and morality is the subject of conscience. A law remains a law whether we like it or not. It is law even if it is immoral and we have to obey it, although no State dare enforce a law which is immoral.

Law is universal in character. There can only be one body of law within the State and applicable to all, without exception, in identical circumstances. Morality is individual and it differs from man to man. My morality differs from my son's; it is the imperative of the individual's heart or his conscience. The ethical appeal is always to the individual's own sense of what is right or wrong and in the last resort to his sense of what is good and evil. This sense of right or wrong may appear to be "the product of custom and social training, but as a principle of conduct it is the 'self-legislating' of a responsible person, choosing in the consciousness of his own liberty the means and ends of welfare."<sup>16</sup> Again, law is superior to morality in definiteness and consistency. Law is precise and certain, chapter and verse given, because of its universality. Morality is characterised by a certain amount of vagueness and uncertainty because of its individuality.

15. See Chapter II, *Supra*.

16. MacIver, R. M., *The Modern State*, p. 155.



Moral laws prescribe absolute standards of right or wrong, justice and injustice. But law follows standards of expediency. What a law prohibits may not be an immoral act. Driving on the right is a social danger and is prohibited by law. But it is not immoral, though it is illegal. There are many things which may be immoral and yet not illegal. To bet on the race-course or to play poker in a club may be immoral, but neither of the two is illegal. "There is thus a legal conscience as well as a moral conscience, and they do not always coincide." The State makes some laws which are based upon expediency and convenience rather than on the standards of morality. Likewise, laws of the State take no cognizance of moral rights. The State guarantees only the enjoyment of civil rights. It is my moral duty to support and serve my parents, since parents possess a moral right to demand this service from their children. If I am not alive to my moral duty and prove an undutiful son, the laws of the State cannot force me to become dutiful. There is nothing to coerce me legally.

It will, thus, be clear that law does not and cannot cover all the ground of morality. "To turn all moral obligations into legal obligations would be to destroy morality."<sup>17</sup> Nor can the State dictate morality, for the State-dictated morality is no morality. For example, a law may be enacted ordering every citizen to go either to a *gurdwara* or a *mosque* or a *mandir* every morning. If I disobey the law, I can be forced to obey it. But it does not mean that I become a moral man by going to a religious place. Morality is the subject of conscience and a matter of conviction. It cannot be forced upon anyone.

**Affinity between Law and Morality.** These are some glaring points of difference between law and morality. Nevertheless there is a close connection between the two as the State is founded on the minds of the citizens, who are moral agents.<sup>28</sup> A bad citizen means a bad State since its laws do not shape and mould him to be a good citizen. "The best State," according to Plato, "is that which is nearest in virtue to the individual. If any part of the body politic suffers, the whole body suffers." This organic view of the State was the essence of the Greek political philosophy. Modern political thought also believes that the individual and the State are inherently connected, both act and react upon each other. Man can be the best of himself only within the State, without the State he is nothing. It is a natural and rational institution. Its purposes are moral and the laws of the State set the standard of morality as an Indian adage says, "as is the king so are the subjects."<sup>19</sup> Similarly, ideas of right and wrong, which represent the ethical standards of the people, in their turn, affect the laws of the State and its actions.

The State, thus, performs a direct function in relation to morality and it takes two forms, positive and negative. The positive function of the State is to make laws which are conducive to the general happiness and are in accordance with the moral beliefs and sentiments of all por-

17. *Ibid.*, p. 157.

18. Gilchrist, R. N., *Principles of Political Science*, p. 172.

19. यथा राजा तथा प्रजा ।

tions of the community. For instance, the Government of India is wedded to the policy of removal of untouchability. It is a moral sin to differentiate between man and a man simply because of the accident of birth. Similarly, it adds to the moral stature of men and society if the laws of the State make drinking a penal offence. When the State repeals a bad law either by itself or as a result of the public protest it performs a negative function. Since our standards of right and wrong change so laws too must change in conformity to such changes. *Suttee* and *Thuggee* were declared illegal acts as they did not accord with our changed standards of virtues or values.

So close is the affinity between law and morality that "the margin between the illegal and the immoral is not always clear." The illegality of today may become the immorality of tomorrow and *vice versa*. "We regard the State," as MacIver has said, "as the condition of morality. The State and law continually affect both public opinion and actions; in its turn law reflects public opinion and thus acts as the index of moral progress."<sup>20</sup> Sometimes laws precede the public demand or their utility is fully grasped. The Hindu Marriage Law in India was enacted at a time when public opinion in its favour was not well advanced. In fact, there was violent opposition to it, though its social value could not be denied. In the last analysis the sanction behind both law and morality is public opinion.

**Law and Public Opinion.** If law is to be the expression of the will of the people, it must conform to the public opinion. If public opinion demands the repeal or enactment of any law the Government and for that matter the legislature cannot afford to brush it aside for long. The representatives of the people, who make the legislature, know it that they have ultimately to appeal to the electorate after the expiry of their legal term of office. If their actions are not approved by the electors at the general elections there is no chance of their re-election. A true representative Government always ascertains the wishes of the people before attempting any kind of legislation. If it does not, the laws so enacted lose their appeal to the minds of the citizens and the foundation of loyalty is shaken. Hume has justly remarked that all governments, however bad, depend for their authority on public opinion. If there is a wide gulf between law and public opinion, it may lead either to widespread lawlessness or even to open rebellion.

But this is not the entire appraisal of the relationship between law and public opinion. If the relationship between the two is to be really organic, then, law should precede as well as succeed public opinion or as Dr. P.S. Muhar puts it, "law should be not only firmly rooted in public opinion but should be a little ahead of it."<sup>21</sup> Dr. Muhar aptly cites the example of law abolishing *suttee* in India and says, "If Lord William Bentinck had taken only public opinion for his guide when he abolished *suttee* in 1835, he would have had to wait much longer for his great

20. MacIver, R. M., *The Modern State*, pp. 153-54.

21. "Public Opinion: Its Nature, Limitations and Conditions for Expression." Bulletin of the Institute of Public Administration, Patna University, Sept. 24, 1956.

social reform." Law must also be normative, if the State is to be the ideal of the aspirations of its people.

But what is public opinion and is it possible to secure genuine public opinion? According to Lowell, public opinion signifies two things. In the first place, the opinion must be public rather than sectional. Individual or sectional opinion is not public opinion as it does not aim at the good of the people as a whole or at least a vast majority of them. And it must really be an opinion. A mere whim or gust of popular passion cannot be public opinion. A public opinion must be stable and enduring. Secondly, it should be an opinion as widely held as possible. Opinion cannot be regarded public unless it is substantially shared by the dominant portion of the community. This does not, however, mean that it should be an opinion of the majority. Nor is unanimity required, although the more generally an opinion is held the more public it can said to be. In fact, progress begins with the minority. "It is completed," says George William Curtis, "by persuading the majority, by showing the reason and the advantage of the step forward, and that is accomplished by appealing to the intelligence of the majority." History has sufficient examples to prove that no reform in any country met with popular favour at the outset. In most cases a few persons took up a cause arousing very great opposition in the beginning. Their persistent efforts, however, enabled them to enlist popular opinion in their favour. Willoughby has beautifully explained this point. He says, "In any community of men that which has assured the character of public opinion is the result not of the opinion of all its members but only of those persons, few or many who are led to think and to form judgments regarding matters of general interest." A true public opinion is, therefore, one which is prompted with due regard to public welfare. It rests on weighing the facts and is not the result of a prejudice or an impression. It is an enduring opinion of the people.

The true worth of public opinion is that the minority should be made to feel by conviction and not by fear that the majority opinion is bound to be for the good of the public and that no sectional interests are involved therein and consequently they ought to accept it. If the majority is prompted to further its own interests by sacrificing the interests of the minority or minorities, the opinion held by the former cannot be called a genuine public opinion in the true sense of the term. On the other hand, if the minority opinion is inspired by the ideals of public good without partisan considerations, it constitutes a genuine public opinion though it may not be the majority opinion. The true test of public opinion is that it must be in the interests of the community as a whole and should be representative too.

It follows from the above that in a representative government where majority party holds the reins of administration and decisions are taken by the majority of votes, the majority should so conduct itself that the opinion held by it should be *par excellence* and the legislation which it enacts should have the spontaneity of acceptance. If it is sectional and is forced upon as a result of coercion, there shall be neither peace nor contentment nor obedience to laws nor loyal devotion to the State. If our criterion of law is that it should be the expression of the will of the



people, it is a condition precedent that it must be representative of public opinion.

No perfect method has yet been discovered to ascertain public opinion with absolute precision. The pulpit, the press, and the propaganda serve as potent instruments for the dissemination of knowledge and for the expression of opinion. But as the conditions prevail, these vehicles of publicity and propaganda manipulate opinion on behalf of the selfish and vested interests rather than deal with truth. The facts are suppressed and falsehood is flashed and preached. Nor do conditions permit for an equal opportunity for the adequate expression of views by all parties and sections of opinion. The result is that the masses do not possess adequate and factual knowledge on the issues which demand their opinion. That is the worst part of democracy.

There is, however, one redeeming feature. A democratic State endeavours to secure national stability by vesting the ultimate responsibility for public action in the average man. The governing class is peculiarly sensitive to its obligations and the majority in power is alive to the fact that one class rules by suffrage of the whole nation as trustees for the public. This makes them exceedingly careful not to violate the decencies of their public conduct and abuse the charge of their trust. They have to account for their actions at the next elections. If their actions are not approved by their electors, they are replaced by reposing the trust in other leaders in whom they have the confidence. Democracy, therefore, lives and thrives upon public opinion. But let it be repeated again that public opinion must be honest, forceful and vigilant. If it is not, and if the minority is active and alert it may succeed in checking what Mill calls 'sinister interests' of a section or class. It is, again, the courage of conviction and the spirit of sacrifice that may ultimately help the conversion of minority into majority.

### SUGGESTED READINGS

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|-------------------|--|
| Amos, S.          | : <i>Science of Politics</i> , Chap. XII.                        |
| Brown, W. J.      | : <i>The Austinian Theory of Law</i> .                           |
| Bryce, J.         | : <i>Studies in History and Jurisprudence</i> , Nos. II, XI-XVI. |
| Dealey, J. Q.     | : <i>The State and Government</i> , Chaps. XVI-XVII.             |
| Dicey, A. V.      | : <i>Law and Public Opinion</i> , Lecture I.                     |
| Duguit, L.        | : <i>Law in the Modern State</i> .                               |
| Gilchrist, R. N.  | : <i>Principles of Political Science</i> , Chap. VIII.           |
| Krabbe, H.        | : <i>The Modern Idea of the State</i> .                          |
| Lippman, W.       | : <i>Public Opinion</i> .  |
| Lord, R. N.       | : <i>Principles of Politics</i> , Chap. VII.                     |
| MacIver, R. M.    | : <i>The Modern State</i> , Chap. VIII.                          |
| Maine, H. S.      | : <i>Ancient Law</i> , Chaps. I, III, V.                         |
| Pound, R.         | : <i>Law and Morals</i> .  |
| Sidgwick, H.      | : <i>Elements of Politics</i> , Chap. XIII.                      |
| Willoughby, W. W. | : <i>Fundamental Concepts of Public Law</i> , Chap. X.           |
| Wilson, Woodrow   | : <i>The State</i> , Chap. V.                                    |

## Relations Between States

**External aspect of the State.** Political Science deals not only with the internal organisation of the State, but with its external relations as well. Every State is an absolutely independent unit. It is subordinate to none and its sovereignty is unlimited over all persons and associations within its territorial limits. Nevertheless no State can have an independent and secluded existence. All States are banded together in a variety of ways. Mutual intercourse between them is primarily due to certain natural causes. Nature has not willed man to be self-sufficient. Dependence is his very psychology. What is true of man is also true of States, for it is the people who make the State and the State exists for the people. If mutual intercourse between States is not recognised and established, society is bound to stagnate. Modern economic, scientific, social and cultural developments have further cemented the ties of mutual interests and common affinity. In fact, in the civilised world of today the citizens of one country very largely share in the thought, the art, and the literature of the neighbouring communities. The mutual contact between States is strengthened, if citizens of countries politically separate, for instance, India and Pakistan, speak a common language or "where a kindred descent enables them to look back to the same history and traditions in the past."

The relations between States demand their regulation in the same way as man subjects himself to certain rules of conduct in his dealings with his fellow-citizens.<sup>2</sup> In the beginning, the rules of conduct between States were rudimentary and not uniform in character. Now there is an increasing tendency to conform them to a definite code of conduct. Uniformity and definiteness are necessitated by the greater economic and social interdependence of peoples or nations. Without such rules there would be confusion and chaos and all causes of disputes would have to be settled by the arbitrament of war.

**International Law.** The rules which States observe in their dealings with one another are called International Law. International Law is defined as the system which orders the relations between States. It binds them to mutually agreed and recognised principles and rules governing the rights of the States in relation to each other and prescribes a

1. Leacock, *Elements of Political Science*, p. 84.

2. MacIver, R. M., *The Modern State*, p. 282.

procedure by which those rights can be protected and in the event of violation redressed. Sovereign States are, thus, the subject of International Law and its scope extends to diplomatic intercourse between States during peace and settlement of disputes by peaceful means, if ever they arise. If the disputes cannot be reconciled and war is declared how it should be conducted, the rights and duties of neutral powers, the negotiation and conclusion of peace and other allied matters.

But how far these principles, which constitute the content of International Law, are binding on the States and how do we reconcile such regulations with the sovereignty of the State are important questions to decide. German writers, for example, Hegel, Jellinek, and Trietschke, while admitting that States are bound in honour and good faith by the terms of international law and treaty obligations, maintain that they are not legal obligations. The States, they contend, voluntarily subject themselves to international obligations, and there is nothing to force their obedience. Trietschke upholds the right of every State to declare war and to repudiate its treaties. Hitler, too, declared unequivocally that treaties were nothing more than mere scraps of paper. The sanction of international law, they say, is auto-limitation which can be withdrawn at the will of the State. "The subjects of international law," says Trietschke, "being sovereign States subject to no legal superior, they are the judges in the last analysis of their own rights and of their obligations to other States."

**Legal Nature of International Law.** It is, therefore, a controversial issue whether the principles and rules governing the relations between States are merely a body of rules of international morality, without legal force, or whether International Law is in reality law, a branch of jurisprudence proper. It was decided in *West Rand Central Gold Mining Company v. Rex* that no principle of International Law was enforceable in British Court until it had been formally adopted into the body of the Municipal Law by an Act of Parliament. The Analytical School of Jurists, founded by Bentham and Austin, deny to International Law the status of law. They contend that law is a command issued by a determinate human superior to an inferior and its disobedience is accompanied by punishment. But in the community of nations, comprising sovereign States, there is no determinate superior political authority to issue commands and enforce sanctions and penalties. If it be presumed there is one to command and others to obey, it establishes their subordinate status and with that they disappear as sovereign States, which are the subjects of International law. Nor are there courts with power to enforce International Law or impose penalties for disobedience. States, of course, refer matters of disputes arising between them to tribunals for arbitration, but the decisions of such tribunals are not binding on the sovereign States. It is for them to accept or reject such decisions and there is no authority competent and powerful to enforce and punish the recalcitrant States. The sanction of International Law is, therefore, customary. The law which rests on customs, consent and agreements cannot be law. It is only a sense of moral obligation that makes it binding and, accordingly, at the best it can be designated as international morality. Lord Salisbury, while addressing the House of Lords, once said, "I think, my Lords, we are misled in this matter by the facility with which we use



the phrase International Law. International Law has not any existence in the sense in which the term law is usually understood. It depends generally on the prejudices of the writers of the text books. It can be enforced by no tribunal, and, therefore, to apply to it the phrase Law is to some extent misleading."<sup>3</sup> Similarly, Lord Coleridge observed in *The Queen v. Keyn* (1876): "Strictly speaking international law is an inexact expression, and it is apt to mislead if its inexactness is not kept in mind. Law implies a law-giver, and a tribunal capable of enforcing it and coercing its transgressors. But there is no common law-giver to sovereign States, and no tribunal has the power to bind them by decree or coerce them if they transgress."

But modern writers accept International Law as law in the real sense of the term. They regard Austin's theory of sovereignty in its international relations as "not only a legal fiction but baneful and dangerous dogma which ought to be abandoned, and that notion should be expunged from the literature of international law." It is asserted that sovereignty of the State does not imply that the States cannot mutually agree to follow certain rules of conduct for common safety and well-being. Chief Justice Marshall, of the United States Supreme Court, recognized the absolute and exclusive authority of the State over all persons and things within its territory. But, he admitted that considerations of mutual benefit and advantage in practice made necessary "a relaxation of that absolute and complete jurisdiction which sovereignty is said to confer."<sup>4</sup> Law is not always the command of a determinate human superior. There are various other sources of law too. No one can ignore the influence of customs and the common law. Common law does not emanate from the legislature. Nor do customs. Moreover, law must adjust itself to the social needs of the community. International Law is the result of ages, the rules of which have been evolved and accepted as governing the conduct of States in times of war and peace.

People do not obey laws merely for fear of punishment. Even in the presence of the coercive authority of the State positive laws are disobeyed every day by scores of people. Violation of laws, however, does not mean that they lose the significance of laws. The sanction of all laws goes back to public opinion. The sanction of International Law, too, has the same basis as the sanction of ordinary law. It is the force of the minds which made these rules and it is the force of the minds which impresses their obedience. As regards the sanction behind International Law, it is now conceded by all that a world public opinion is rapidly growing to provide adequate sanctions. The United Nations crystallises world public opinion and it has means at its disposal to coerce a delinquent State by applying either political or economic sanctions, as it did in raising an army to fight against the aggression of China in Korea. Sometimes individual States themselves apply these sanctions as did Britain and France against Italy in 1935. The success of the United Nations in raising the Emergency Force in Egypt and the immediate withdrawal of British, French and Israeli forces from the Egyptian territory,

3. As quoted by Garner, *Political Science and Government*, p. 193.

4. *Schooner Exchange v. McFaddon* (1812)

once again, demonstrated that the only support and sanction necessary for the effective operation of International Law is a broadbased public opinion. "Like individuals, States wish to enjoy the prestige of a good reputation, on material grounds, though not on these alone, they value the friendship of their fellows; above all, they realise that grossly illegal conduct may inflame foreign opinion and lead to the vicarious enforcement of their obligations." Even if it is admitted that absence of authority to enforce its orders is the weakest point in the nature of International Law, and States have very often flouted its prescriptions by their wilful actions, still, absence of sufficient authority to enforce the provisions of International Law or its deliberate violation by some States does not mean that it ceases to be law real and proper.

It is, also, untrue to say that there are no courts to decide international disputes and apply International Law. Arbitration or the settlement of differences between independent States has assumed considerable proportions since the establishment of the defunct League of Nations. The United Nations makes provision for the International Court of Justice. The purposes of the United Nations Charter include the adjustment or settlement of international disputes "in conformity with the principles of justice and international law." Legal forms are used in the International Court of Justice and in arbitral procedure, and authorities and precedents are quoted as in courts of law. Finally, there are courts in every country which try prize cases in accordance with the provisions of International Law.

The principles of International Law, it may be added, have been built up by legal reasoning and are applied in a legal manner. All civilised countries accept International Law as a part of their Municipal Law and their legislatures do not make legislation opposed to the provisions of International Law. Piracy, for example, is prohibited by International Law and no State will pass legislation permitting piracy. Laws of no civilized State recognize slavery and permit its existence.

It is, therefore, concluded that the principles of International Law are fundamentally the same as those of the Municipal Law. The former, like the latter, grows and develops in response to the spirit of each age and changing conditions of society. Order is the essence of human life, but order is precarious and hollow until International Law is assured. International Law may, thus, be defined as a body of those "rules of conduct which reason deduces as consonant to justice from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent." It is, accordingly, law proper. It is not a mere collection of moral rules. Its doctrines, as Hall says, "have been elaborated by a course of legal reasoning; in international controversies precedents are used in a strictly legal manner, the opinions of writers are quoted and relied upon for the same purposes as those for which the opinions of writers are invoked under a system of municipal law; the conduct of States is attacked, defended and judged within the range of international law by reference to legal considerations alone; and finally it is recognised that there is an international morality distinct from law, violation of which gives no for-

mal ground of complaint however odious the action of the ill-doer may be."<sup>6</sup>

The only baffling point in this context is that although all civilised States have accepted rules of International Law as binding upon them, yet they are enforced by every State according to its own moral standard or convenience. And the moral standard of every State is influenced by the economic and political tendencies of the world as a whole and the expediency of the State concerned. Some States make a bid for world power and they enforce the principles of International Law according to their convenience. If all the States were to pledge themselves scrupulously to the accepted principles of International Law and adhere to its ideals much international hostility can be avoided and the controversy whether International Law is a law or not becomes futile.

### HISTORY OF INTERNATIONAL RELATIONS

International Law is of recent origin, being only a little more than three hundred years old. Its fundamental principles, however, have their origin much earlier; some can be traced to have prevailed even in the post-Vedic period in India. Lawrence who has made a special study of its recent development divides it into three periods. The first embraces the period from the origin of the European civilisation till the beginning of the Roman Empire. The second period covers the period from the Roman Empire to the Reformation and the third extends from that date up to the present time. Though the history of international relations is divided into three periods, yet the earlier periods are really the basis of the later periods.

**First Period—To the beginning of the Roman Empire.** India knew much of International Law when the rest of the world was in a state of barbarism. In the post-Vedic period there existed a regular code according to which wars were declared and fought, treaties and alliances negotiated and concluded, and ambassadors accredited. In the European countries among the earliest peoples, about whom History gives us authentic information, there were no mutual claims and duties except between the communities which were bound to one another by bonds of common descent and common language. There was perpetual hostility between tribes alien to one another, and "war was declared without ceremony and carried on without mercy."<sup>5</sup> The Greeks even regarded their neighbours as "barbarians" to whom they owed no duties. The vanquished were rendered slaves and Aristotle too supported the institution of slavery. The real contribution of the Greeks was the Maritime Code, that is, rules governing interstate commerce. They also in a rudimentary way recognised "the law of mankind", which established a vague system of the protection of envoys, obligations of alliances and sanctity of treaties. This contribution of the Greeks, though negligible, is regarded by Gilchrist as tangible which helped the development of International Law.<sup>7</sup>

5. *International Law*, p. 14.

6. Lawrence, *op. cit.*, Chap. III.

7. Gilchrist, R. N., *Principles of Political Science* p. 178.



The Romans, too, before they became an Empire occupied the same isolated position as the Greeks. But in the early period of Rome's Republican History there existed laws called *jus fetiale*. The *jus fetiale* contained precepts about war and peace and was enforced by a semi-religious college. But the real contribution of Rome in the development of International Law was the *jus gentium* or law of nations. The *jus gentium* was a code of regulations applied to the dealings of citizens belonging to different nations. It took its name most probably from the fact that its rules were presumed to consist of principles of conduct common to the laws of all nations.

**Second Period—From the beginning of the Roman Empire to the Reformation.** With the spread of the World Roman Empire there was no development in international relations. The idea of a common superior supreme over all the political sub-divisions of the world was accepted. Even after the fall of the Roman Empire the theory of a common superior persisted till the Church presented itself as a rival power. With the emergence of the Church as a power "it became necessary in theory to divide universal dominion between the secular and the spiritual sovereigns whose conflicting pretensions helped to break down the conception of a single final authority." With the decay of the idea of single authority arose other influences which helped the development of international law. The feudal system brought in the concept of theory of territorially independent States. The revival of commerce and the growth of practically independent cities led to the recognition of maritime codes regulating their dealings. The *Consolato del Mare*, formulated probably in the twelfth century and observed by all the Mediterranean powers, contained rules regarding peace and war, rights of neutral States, prize law, and navigation. Christianity had taught to the people humane methods of warfare. The savagery of the European wars helped to develop international law as a means of alleviating the horrors of war. For the first time jurisprudence was separated from theology and ethics in *De Juri Belli* (The Laws of War, 1598) by Alberico Gentili, Professor of Civil Law at Oxford. In 1625, Hugo Grotius, the Dutch scholar, formulated the doctrine of International Law with clarity and attempted to analyse international practices in his famous book, *De Juri Belli ac Pacis* (On the Law of War and Peace). Grotius did not claim any originality, but by combining natural concepts of reason and justice with the natural practices of States throughout the period of human history revived the study of Roman Law, with the *jus gentium* as its basis.

**Third Period—Reformation to the Present Day.** With the emergence of independent national States organised on a territorial basis, new rules of mutual intercourse in peace and war were, thus, evolved and the inevitable outcome was the formulation of new international principles. Modern international law is essentially the product of this period and the result of the teachings of Hugo Grotius. Hugo Grotius emphasised two fundamental doctrines:—

(a) All States are equally sovereign and independent.

(b) The jurisdiction of the State is absolute over its entire area.

Here is the modern idea of the State, sovereign both in its external

and internal aspects, and it is on this basis that modern International Law has developed. Grotius built his thesis on the universally accepted theory of the law of nature. In the Peace of Westphalia (1648), which created modern Europe, the leading principles of Grotius were recognised. Many writers subsequently contributed to its development and International Law is now accepted as a special branch of law. They furthered the work of Grotius by codifying the customs of nations and pointing out the differences between good and bad practices. The history of international relations from 1648 to our own time makes clear the increasing definiteness of International Law. It covers most of the problems of peacetime and defines the rights and duties of belligerents and neutrals during war-time.

### SOURCES OF INTERNATIONAL LAW

International law being customary law, its principal sources are:

1. **Roman Law.** Roman law formed a complete and general code from which most of the Continental Countries in Europe derived their legal principles. It also provided a basis to cover the early relations of the States. The *jus gentium*, which was applied to the dealings of citizens belonging to different nations, was based upon justice, equity and commonsense. Besides, the *jus gentium* emphasised the idea of moral obligations which were equally binding on all the States. Finally, the Roman idea of equality of all citizens before law led to the idea of equality of sovereign States in International Law.

2. **Works of Eminent Writers.** Works on history and biography provide useful information with respect to wars, diplomacy, treaties and alliances. But more important are the writings of eminent jurists who have reduced to a system the rules of conduct adopted by sovereign and independent States in their dealings with one another. "These writers, by showing what rules nations actually do observe, by interpreting general opinion on given questions, and by giving definitions and modifications of previous rules based on general consent, provide a source of international law." The first and the most prominent among them was Hugo Grotius. His book, *On the Law of War and Peace*, exercised enormous influence on the external dealings of all the States. Then, follows a long list of able lawyers, like Byn Ker Shoek, Wolf, Vattel, Kent, Wheaton, Manning, Woolsey, Westlake, Lawrence and Hall who are usually recognised as authorities on International Law, and statesmen of all times have accepted their opinions as authoritative. It must be noted that the mere opinion of any individual writer has of itself no binding force. Nevertheless opinions of eminent jurists carry a great force and it is customary to cite them as authorities. Kent says, "In cases where the principal jurists agree, the presumption will be very great in favour of the solidity of their maxims; and no civilised nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of the established writers on international Law."

3. **Treaties, Alliances and Conventions.** Treaties, conventions and alliances, either for commercial or political purposes, form an important

source of International Law. Treaties are compacts entered into by States wherein the contracting States agree to observe given rules of conduct in their intercourse with one another. They are concluded either in accordance with the existing rules of International Law, or some new rules mutually agreed upon modifying the previous ones. When most of the States become parties to such a treaty, convention or alliance, they tend to create an International Law. The most important treaties that form sources of International Law deal with questions of territory, like the treaties of Westphalia (1648), Utrecht (1713), Paris (1763), or the transfer of sovereign rights, as the treaties of Versailles (1783), Paris (1856), or conduct to be observed during war by both belligerent and neutral countries. The examples of the latter are the Geneva Convention (1864) and the Brussels Conference (1890).

4. **Municipal Law.** In the Municipal Law of every State may be found germs of International Law. The Municipal Law of every country regulates the questions of citizenship and naturalisation, neutrality, tariffs, extradition, diplomatic and consular services, etc. All these subjects are of international interest and the decisions on these questions are cited as precedents in international negotiations. Similarly, admiralty questions dealing with prize cases are based almost entirely on international usage. Some of the most important decisions of the Supreme Court of the United States relate to questions fundamentally international.

5. **Decisions in International cases.** It is customary with the States to refer their disputes to international tribunals or courts of arbitration or conferences for adjudication. These decisions are accepted as precedents and become part of International Law. Sometimes the cases of dispute are referred to international conferences. During modern times, The Hague, Washington and Lausanne conferences have made valuable contributions to International Law. The member-States of the League of Nations were pledged not to go to war till the matter in dispute had first been submitted to arbitration. The Covenant of the League of Nations provided the machinery by which peaceful settlements could be effected. The Council, the Assembly and the Permanent Court of International Justice all had jurisdiction to decide cases of dispute. The United Nations Charter also contains a similar provision.

6. **Reason.** Another important source of International Law is reason. Cases often arise for which no precedent may exist, and for which there exists no established principle on tacit or explicit consent. In such cases, those who administer International Law must resort to determining by reason the principles of equity to apply. By considering precedents, finding analogies, and expanding already accepted principles, they evolve a judicious principle to fit the cases under adjudication. Such decisions have come to constitute a body of precedents generally accepted as valid.

7. **Customs.** International Law is essentially customary. Certain usages and practices which particular States adopted have been accepted and followed so generally that they have come to constitute a definite body of rules. Many of the principles of conduct are based on analogies with principles regulating individual conduct. Here International Law resembles the English Common Law. It derives its authority



from generally accepted principles of usage, and tests new cases by the application of precedents.

8. **History of War and Diplomacy.** The history of wars, of negotiations and conclusions of treaties are fruitful sources for the development of International Law. The declarations on policy, like the Atlantic Charter and the Potsdam Agreement, and manifestoes issued from time to time also help the growth of International Law.

9. **Opinions of Diplomats and Statesmen.** The correspondence between diplomats belonging to various States or between a government and its diplomatic agents accredited to other States is an important source of international usage. Often such opinions are regarded as confidential, but the United States, Britain and other countries having democratic governments publish a greater part of their foreign correspondence. Instructions issued by the States for the guidance of their foreign service representatives and to commanders of armed forces are also valuable in the growth of International Law. The French Marine Ordinance of 1861 formed the basis of Prize law. The "Instructions for the Guidance of the Armies of the United States in the Field" (1863) exercised a great influence in adopting more humane methods of warfare.

## SCOPE AND CONTENTS OF INTERNATIONAL LAW

In contrast to natural persons who are subject to the law of the State, the subjects of International Law are corporate bodies known as States. For purposes of International Law a State is defined as a permanently organised political society, occupying a definite demarcated territory and within that territory it is independent and free from control by any other State and, as such, it acts as an independent political agent in relation to other States. For the conduct of international relations, the actions of public officials designated by the State to represent it are distinctly the acts of the State, for which the State is held responsible.

Here it is important to distinguish between International Law and International Private Law (conflict of laws). International Private Law is a branch of International Law, but whereas the former deals with individuals and affects their private rights, the latter is concerned with the State as an entity. International Private Law deals with the rights and obligations involved when individuals claim in one State rights acquired under the laws of another. These rules cover the validity of foreign marriages and divorces, wills, contracts, etc.

The scope of International Law, therefore, extends to equal and sovereign States in no way subordinate to any other. All stand on a footing of equality so far as their status of statehood is concerned. "No principle of law is more universally acknowledged," said Chief Justice Marshall, "than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another." In outlining the scope and divisions of the relations among States, distinction should be made between the normal rights and obligations that exist in times of peace and the exceptional rights and obligations that exist in times of war. The first is called the

laws of peace and the second the rules of war. The rules of war necessitate consideration of relations between actual belligerents, and the relations between the belligerents and neutrals. A more comprehensive division of the contents of International Law is:

1. Laws governing States in times of peace;
2. Laws governing States in times of war;
3. Laws governing States in the relation of neutrality.

The laws of peace embrace the rights and obligations concerning independence and equality of the States. They also include the discussion of the territorial limits of jurisdiction, the relation of a State to the adjacent waters of its coast and other allied problems. With this is connected the jurisdiction and responsibility of a State with reference to its citizens living within the State or abroad, rules governing aliens and principles of naturalisation. Finally, are the rules of intercourse of States. These cover the rights and duties of officials attached to foreign offices; organization and procedure of international conferences; nature and method of treaty-making.

The larger part of International Law consists of the rules of war. Here we study classification of wars; declaration of war; laws and customs of war on land, sea and air; effects of war; agents, instruments and methods of warfare; treatment of public and private property in war both on land and at sea, etc. Under the law of neutrality the scope of International law extends to duties of belligerent States to neutral States, duties of neutral States to belligerent States, neutral commerce, contraband, blockade, etc.

### INTERNATIONAL ORGANISATION AND INSTITUTIONS

Differences between independent and sovereign States are bound to arise. But they do not go to war always. History is full of examples when disputes between the contending States had been settled by the mediation of a third party. During the mediæval period and early modern times, when the theory of a common superior still persisted, disputes were very often referred to the Pope by the contesting parties for his arbitration. There was no international organisation which could provide machinery for amicable settlement of international disputes. These conditions continued till the nineteenth century. By that time warfare had become highly mechanised and a costly venture. War also brought about not only untold misery for the belligerent States, but for the neutral countries as well. It meant dislocation of their economy, for the countries of the world had become, after the industrial revolution, dependent financially and commercially. A strong premium, accordingly, began to be put on any method of settling quarrels without actual war. International arbitration began to be resorted to even when questions of great magnitude were involved. Between the United States and Great Britain arbitration was repeatedly employed especially for the rectification of boundary lines as in 1827 and 1846.\* The most import-

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\* 8. It was with regard to the north-east boundary lines in 1827 and to the boundaries on the Pacific Coast in 1846. The award made in 1827 by the King of the Netherlands was, however, rejected by the United States.

ant arbitration was with respect to the **Alabama** case which ended in the award of a compensation of \$15,500,000 to the United States. It is estimated that in the nineteenth century over a hundred important cases were decided through the medium of arbitration.

A further development in international relations can be seen in the attempt to constitute a permanent tribunal for the settlement of disputes and conclusion of treaties between various States binding them to refer their disputes to this tribunal. A conference was convened at The Hague in 1899, wherein it was agreed to establish a permanent court of arbitration. Although it was not obligatory upon the signatory powers to refer their disputes to the Court of Arbitration, nevertheless the Court "offered standing facilities for peaceful settlement very difficult to bring into being during the strained relations occasioned by acute international controversy." Between 1899 and 1912 eleven States referred their disputes to the Court of Arbitration and its decisions were accepted by the parties concerned.

The Second Hague Conference met in 1907, and as many as 44 States participated in it. This conference considered the desirability of revising the system of arbitration adopted in 1899. But it primarily concerned itself with the consideration of the rules of war. The conference, led by Great Britain, attempted to create an International Prize Court of Appeal. A special conference consisting of the chief European powers, and the United States and Japan met in London in 1909, and drew up the Declaration of London which contained provisions concerning blockade, contraband of war, the position of neutrals and compensation. The Declaration of London was withdrawn during World War I by the British Government.

The First Hague Conference was hailed as "the parliament of mankind" and was popularly designated as the Peace Conference. According to the International Peace Bureau of Berne, 133 treaties were concluded during the ten years following the first Peace Conference, the contracting parties having pledged to adopt settlement by arbitration whenever possible. These treaties, however, created delusive hopes about the prospect of permanent peace. The hope cherished during the opening years of the twentieth century that war had become obsolete was falsified by the events culminating in the Great War of 1914. But with the war also came the realization that some comprehensive organisation of States was needed if wars were to be prevented in the future. One of the most important tasks of the Peace Conference which followed the Great War was, thus, the creation of the League of Nations.

## THE LEAGUE OF NATIONS

The League of Nations has been called the "Greatest event since Christ." When World War I ended, twenty-seven Nations banded together and formed the League of Nations. Its objects were declared: "To promote international co-operation and to achieve international peace and security, by the acceptance of obligations not to resort to war; by the prescription of open, just and honourable relations between nations; by the firm establishment of the understanding of international



law as the actual rule of conduct among governments, and by the maintenance of justice and scrupulous regard for all treaty obligations in the dealings of organised peoples with one another." The League of Nations was an association of States for the purpose of international co-operation, the settlement of disputes and the prevention of future wars. Its Covenant provided a number of agencies for the promotion of health, education and economic development as means to cement international co-operation and goodwill and thereby help prevention of future wars.

The avowed object of the League can best be expressed in the words of Manu. The Laws of Manu enjoined: "This is my countryman; this other is a stranger—so thinks the man of narrow mind and heart. The noble soul regards the whole world as his kin." The League of Nations was a development of international movement to free nations from the demon of war. The World War had taken a toll of ten million dead and \$386,000,000,000 of wasted wealth. It also brought in its wake famine, pestilence and hunger for millions of people. There was consequently a strong demand for some permanent international organisation for the promotion of peaceful international co-operation. But it was mainly due to President Woodrow Wilson's eloquent advocacy and insistent endeavour that the League came into being, though the United States of America did not join the League as it was feared that it would involve a departure from its traditional policy of non-involvement in non-American affairs.

There were other urgent problems demanding the existence of a permanent international organisation. World War I was fought largely on the principle of nationality. Many nationalities became nations after the Treaty of Versailles. Some of them required guarantees against aggression and freedom for development. Finally, the management of the territories lost by the Central Powers accelerated the establishment of this world-wide organisation.

**Organisation of the League of Nations.** The League of Nations came into existence in 1920. Its original membership was restricted to 32 allied and associated powers, 13 neutral States, and the newly created States which had signed the Peace Treaty.<sup>9</sup> For new entrants to the League, it was provided that any sovereign State or colony could become a member if the admission was agreed to by two-thirds of the members of the Assembly. No State could withdraw from the membership unless two years' notice to that effect had been given, and it had fulfilled all its international obligations under the Covenant.

There were four organs of the League. The Assembly was the supreme body and it consisted of the representatives of the various member-States including the Dominions of the British Commonwealth and India. Each State could send not more than three representatives, but it was entitled to only one vote. The functions of the Assembly embraced any matter within the sphere of action of the League or affecting the peace of the world. All decisions of the Assembly were to be unanimous. Unani-

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9. Russia joined as late as 1934. Germany and the other States allied to it during the war were not allowed to be members at first, but most of them later became members.

mity was insisted in order to prevent dissension among sovereign States who, it was apprehended, might act by commanding a bare majority in a way repugnant to them. The Assembly adopted the budget of the League, approved the work of the Council, Secretariat and other organs, and adopted draft conventions to be referred to the member-States for ratification.

To facilitate and expedite the work of the League a smaller body, called the Council, was formed. The Council of the League consisted originally of four representatives of the Principal and Associated Powers, with representatives of four other members of the League, elected annually by the Assembly.<sup>10</sup> The Council normally met three or four times in a year but could be summoned as often as necessary if emergency required. The Council was competent to deal with all matters concerning the sphere of action of the League or affecting the peace of the world. Its decisions, like those of the Assembly, were to be unanimous, except for a few minor matters specially specified in the covenant. The Council, thus, acted as a commission of inquiry and conciliation in any dispute referred to it, and to recommend action to enforce the obligations of the Covenant.

The Secretariat-General, established for secretariat and office work, was a permanent organisation of the League with its seat of office at Geneva. The Secretary-General was appointed by the Council with the approval of the majority of the Assembly. The staff of the Secretariat-General was appointed by the Secretary-General and the Council. The expenses of the Secretariat were apportioned among the member-States of the League. Its functions were to keep all records of the proceedings of the League, to secure the necessary information required by the League, and to conduct correspondence on its behalf. All treaties concluded or international agreements entered into by the member-States were required to be published by the Secretary-General, otherwise they were not valid.

The main object of the League was to check all future possibilities of war and to evolve a scheme for the settlement of international disputes. A permanent Court of International Justice was set at The Hague. It consisted of nine Judges and four Deputy Judges elected for nine years by the Assembly and the Council, and settled such disputes as were referred to it and required judicial settlement. It was also empowered to give opinions on matters referred to it either by the Assembly or by the Council.

The Covenant of the League of Nations included important clauses relating to future and existing treaties, and conditions of labour. An International Labour Organisation—an autonomous body within the League—was created with the object to secure and maintain fair and humane

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10. In 1922, the membership of the Council was increased to ten, two extra seats being allotted to the smaller nations. In 1926, a permanent seat was given to Germany, when she was admitted to the League. This increased the permanent seats to five and the non-permanent seats were raised to nine. In 1933, a tenth non-permanent seat was created for three years. In 1936, it was continued for another three years and an eleventh seat was added for three years.

conditions of labour. The International Labour Organisation consisted of the International Labour Conference, a representative body of delegates of governments, employers and workers meeting at least once a year at Geneva. Besides this, there was the International Labour Office controlled by a governing body.

### WORK OF THE LEAGUE

**Settlement of Disputes.** The three main functions of the League were settlement of international disputes, removal of the causes of war, and organisation in international co-operation. As regards settlement of disputes, the Covenant of the League provided for the territorial integrity and political independence of all its members. In case of any aggression or threat, or danger of aggression, the Council was empowered to advise the League on measures to be adopted for preserving the territorial integrity and independence of the member-States.<sup>11</sup> In case of war or threat of war, whether immediately affecting any of the members of the League or not, the League was empowered to take any action that was deemed wise and effectual to safeguard the peace of nations.<sup>12</sup> Finally, in case of any dispute likely to lead to a rupture, the matter was required to be submitted either to arbitration or to inquiry by the Council. In no case a resort to war was to be made until three months after the award by the arbitrators or the report by the Council.<sup>13</sup> In case a State went to war by violating its pledges, the other member-States were to break off diplomatic and other intercourse with it. There was just a vague provision for military sanctions.

The efforts of the League in this respect were commendable. It secured settlement in the Aaland Islands and Upper Silesia when all other means had failed. It saved Albania, in 1921, from piecemeal extinction. In 1925 Greco-Bulgarian clash was averted by the interference of the League and in the same year it succeeded in the mediation of Mosul dispute. The Permanent Court of International Justice at The Hague decided 27 cases and handed down the same number of advisory opinions. The reputation of the Court for impartiality was so great that its decisions were respectfully accepted by the contending States and, thus, the League on many occasions saved countries from international rupture.

**Removal of the causes of War.** The members of the League recognized that maintenance of peace required reduction of national armaments to the lowest point consistent with national safety, and enforcement of common action of international obligations.<sup>14</sup> The Council of the League of Nations was empowered to formulate plans for reduction of armaments for consideration and action by Governments of the member-States. It was, also, empowered to advise how the evil effects of the manufacture by private enterprise of munitions and weapons of war could be prevented. But the Disarmament Conferences, held from 1925

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11. Article 10.

12. Article 11.

13. Article 12.

14. Article 8.



onwards, failed. Perhaps, those who advocated disarmament were the first to arm themselves. Conquests of smaller States, the policy of colonial expansion, and secret alliances, forbidden in the Covenant of the League, remained the avowed policy of all the major Powers. Specific blame could not be placed on any single country. It was the common action of all. The result was that every State, big or small, began pursuing the policy of war-preparedness. War-preparedness means increase in armaments and reckless increase in armaments creates a vicious circle as it caused distrust and panic particularly in small States.

In graver matters the League, thus, failed miserably. Japan was the first to violate the sanctity of the solemn commitments by invading Manchuria in 1931. Till that time the authority of the League of Nations had been impressive. Mussolini was next to follow Japan. The Duce pounced upon Ethiopia in 1935. In the meantime Hitler was militarising Rhineland and driving Germany forward to the road of conquest. After resigning from the membership of the League, Germany denounced the Locarno Treaty in 1936 and conquered Austria in 1937. The ineffectiveness of the League was further demonstrated by Germany's conquest of Czechoslovakia. Then came the subjugation of Poland both by Germany and Russia in September 1939.

**Organisation of International Co-operation.** The activities of the League in this sphere were really appreciable. The International Labour Organisation had become a recognized source of information about labour conditions. The League's financial section presided over the successful rehabilitation of Austria, Hungary and Greece, administering large loans in each case. The League's world-wide fight against the opium traffic was historic. Similarly, the work of the Transit and Communication Section of the League was admirable. Its works on intellectual co-operation could not be dismissed as negligible.

**Causes of the League's Failure.** The League of Nations, however, on the whole miserably failed in its mission. One of the main reasons for the League's failure was the international disequilibrium brought about by economic, political and social forces in the post-war period. Hunger for more land and craze for new markets became a mania with every country, particularly with Germany, Italy, and Japan. Economic nationalism and, thus, a plea for self-sufficiency undermined the very basis of the League, that is, international goodwill and co-operation. In spite of its best efforts, the World Economic Conference, convened under the auspices of the League of Nations in 1927, could not solve the so-called insoluble problem of tariffs. It had its political repercussions, for economic retribution is always followed by destructive results.

Immediately after World War I an unbridgeable gulf was created in the economic outlook of the States. This was due to the new political ideologies professed by them. Nationalism in its narrow sense did no longer remain the slogan of pseudo-politicians only; it had become the accepted policy of every State. Democracy gave way to concentration of authority in every country including the citadels of democracy—United States, United Kingdom and France. The economic depression of 1931, and the maldistribution of gold further disturbed the world problem and

consequently there ensued an economic tug-of-war between the major countries. This created suspicions and distrust which ultimately culminated in war preparations, another major addition to the already existing vicious circle. The cumulative effect of all these forces was that the superstructure of international brotherhood, so cherishingly envisaged in the League of Nations, toppled down.

The prestige of the League of Nations waned. The deliberations of the Assembly and the Council became a mere farce. The promoters of war preached peace. "I cannot recall any time," said Sir Winston Churchill, "when the gap between the kind of words which statesmen used and what was actually happening in many countries was so great as it is now." The League could have succeeded in its object only if the representatives of the major member-States had genuinely striven for collective security. But events show otherwise. "When the Covenant appeared to require action which might have entailed practical consequences for the mass of the people, successive governments preferred inaction."<sup>15</sup> It was, therefore, no surprise when the news of the War flashed across the world on September 3, 1939, meaning the death-knell for the League.

### THE UNITED NATIONS

**Atlantic Charter.** From the very start of hostilities in 1939, the people had been persistently clamouring for a clear declaration of the war aims. On March 15, 1941, Franklin D. Roosevelt in the course of a speech broadcast to the world maintained: "We believe that the rallying cry of the Dictators and their boasting about the master race will prove to be pure stuff and nonsense." He further declared that any nationality, no matter how small, had the inherent right of its own nationhood. Roosevelt, also, deprecated the idea of any one nation, "which because of its size and military might, asserts its right to goosestep to world power over other nations and other races." While justifying United States' participation in World War II, President Roosevelt said, "Never in all our history have Americans faced a job so well worthwhile. May it be said of us in the days to come that our children and our children's children will rise up and call us blessed."<sup>16</sup> President Roosevelt, again, reiterated the substance of these declarations in May 1941, when during a 'Fireside Chat' to the nation he pointed out the application of the four freedoms<sup>17</sup> to all the subject countries of the world.

Then, came on August 15, 1941, the Eight-Point Joint Declaration, popularly called the Atlantic Charter. It embodied the objectives for which the Allies participated in the War and enunciated the principles forming the basis of the future peace of the world. Roosevelt and Churchill guaranteed territorial integrity to all nations and the rights of man to all the peoples of the world. But Churchill denied the application of the Atlantic Charter to India. The wartime Prime Minister of England harked back to the seemingly logical, but really inconsistent and even

15. Carr, E. H., *The Twenty Years' Crisis—1919-39*, p. 184.

16. Anup Chand Kupur, *India and the Atlantic Charter*, p. 3.

17. Roosevelt defined the four freedoms as: (1) Freedom of speech and expression; (2) freedom of every person to worship his God in his own way; (3) freedom from want; and (4) freedom from fear.

hypocritical plea that Britain could not "renounce the obligations arising from our long connection with India and our responsibilities to its many creeds, races and interests." The Atlantic Charter, thus, became a symbol of hypocrisy and so Pearl Buck rightly pointed out that World War II "is no longer a fight for human freedom, but only to save European civilisation."

**Dumbarton Oaks Proposals.** World War II had, however, increased the necessity of some international organisation which should make the nations international-minded, and possess sufficient authority to enforce its decisions. Some suggested the idea of reviving the League of Nations by strengthening its powers and membership. But the United States devised a new plan which was submitted to the representatives of the United Kingdom, the Soviet Union, and China, at a conference held at Dumbarton Oaks in the U.S.A. on October 7, 1944. The four powers agreed to submit the proposals for the structure of the future world organisation to all the United Nations Governments, and to the peoples of all countries for their study and discussion. The Dumbarton Oaks Plan contained two important proposals. The first was about the creation of an agency called the Security Council, consisting of eleven members and it was to be entrusted with the responsibility of preventing future war. Second, the member-States of the new organisation were required to place armed forces at the disposal of the Security Council in its task of preventing war and suppressing acts of aggression.

The Plan was fully discussed by all the allied countries. Comments and constructive criticisms came from several governments. The Allied Nations gave it a wide publicity, particularly to the provision of placing armed forces at the disposal of the Security Council. Extensive press and radio discussions were arranged so as to enable the people to judge for themselves the merits of the new plan. But the Dumbarton Oaks proposals had yet to decide about the voting procedure in the Security Council. This was done at Yalta, in the Crimea, where Roosevelt, Churchill and Stalin met in conference. On February 11, 1945, it was announced that a Conference of the United Nations would be called to meet at San Francisco in the United States on the 25th April 1945, to prepare the charter of an international organisation on the lines of the Dumbarton Oaks Plan.

**San Francisco Conference.** Delegates of fifty nations representing over eighty per cent of the world's population met on the scheduled date at San Francisco. They had before them the Dumbarton Oaks proposal and working on this basis, they planned to set up an organisation which would preserve peace and help in building a better world. The Conference was divided into various Committees and Commissions each entrusted to the resolution of a special task. There were only ten plenary meetings of all the delegates, but nearly 400 meetings of the committees were held "at which every line and comma was hammered out." On June 25, the delegates met in full session for the last meeting when the United Nations Charter was passed unanimously. The next day each delegate affixed his signature on the Charter. "The Charter of the United Nations which you have just signed," said President Truman on this occasion, "is a solid structure upon which we can build a better world."



History will honour you for it. Between the victory in Europe and the final victory, in this most destructive of all wars, you have won a victory against war itself. . . . With this Charter the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people."

**Birth of the United Nations Organisation.** The United Nations Organisation did not come into existence at the signing of the Charter. In many countries it had to be approved by their Parliaments. It was, accordingly, provided that the Charter would come into force when the Governments of China, France, Great Britain, the U.S.S.R. and the United States of America, and a majority of the other signatory States had ratified it and deposited notifications to that effect with the State Department of the United States of America. On October 24, 1945, this condition was fulfilled and the United Nations Organisation came into existence. Thus, "four years of planning and the hope of many years had materialized in an international organisation designed to end war and promote peace, justice and better living for all mankind."

**United Nations Charter.** The United Nations Charter contains 111 articles embodying the purposes and principles of the United Nations, and the organs through which its will is expressed and manifested. The Preamble expresses the inspiration and guiding spirit of the United Nations. It begins with: 'We the people of the United Nations'—an unprecedented feature of an international document—and then sets forth the basic aims of the United Nations, which are:

- (1) To save succeeding generations from the scourge of war;
- (2) To reaffirm faith in fundamental human rights;
- (3) To establish justice and respect for international obligations; and
- (4) To promote social progress and better standards of life.

For the realisation of these ends, the Preamble enjoins the peoples of the United Nations to practise tolerance, to live in peace as good neighbours, to unite to maintain peace and security, to ensure that armed forces shall not be used, except in the common interest, and to employ international machinery for the social and economic betterment of all peoples.

**Purposes and Principles of the United Nations.** Obviously the urgent and fundamental needs of the peoples are freedom from war and from fear of war. The first purpose of the United Nations is defined as the maintenance of international peace and security. The organisation is to employ all peaceful means to prevent or remove threats to peace and suppress acts of aggression and other breaches of peace. It is required to adjust or settle in accordance with justice and international law, international disputes and situations which may lead to conflict. To achieve these results, the United Nations must take effective measures. The second aim of the United Nations is to adopt means to develop friendly relations among the peoples of all nations so as to cement the ties of international brotherhood. This friendship among nations should be based on respect for the principle of the equal rights and equal self-determination of peoples.

The most fruitful cause of international conflicts is the economic rivalries between nations and other maladjustments. The United Nations aims to strive for co-operation among countries in solving international problems of an economic, social, cultural and humanitarian character. This is the third purpose of the United Nations. Closely connected with it is the object of promoting and encouraging basic human rights and freedoms for all people without distinction of race, sex, language or religion. Finally, the United Nations, as the principal world organisation, shall work as a centre for harmonising national action in order to achieve these common ends. This is described as the fourth purpose of the United Nations.

The above four purposes are the cause and object of the Charter to which the member-States collectively and severally subscribe. The Charter, then, defines the basic principles on which the United Nations Organisation is based. These principles are the seven general obligations which bind member-countries and the United Nations Organisation as a whole. The seven obligations are:

1. The United Nations Organisation is based on the sovereign equality of all its members;
2. Each member-State shall fulfil its obligations, under the Charter, in good faith;
3. All member-States shall settle disputes by peaceful means and in such a manner that peace, security and justice are not endangered;
4. No member-State shall use force or threat of force against the territory or the independence of any State or in any manner not consistent with the purpose of the United Nations;
5. No member-State shall help any State against which the United Nations is taking enforcement actions, and shall support the Organisation in any action that it takes in accordance with the Charter;
6. The United Nations shall ensure that States which are not members act in accordance with these principles as far as is necessary for the maintenance of peace and security; and
7. The United Nations shall not intervene in matters which are essentially within the domestic jurisdiction of any State, or compel any member-State to submit matter to settlement by the United Nations—a principle which will not apply when coercive measures are applied in order to deal with threats to the peace, breaches of the peace and acts of aggression.

**Membership of the United Nations.** All the fifty-one States which were signatories to the Charter at San Francisco, were accepted as original members of the United Nations Organisation. The membership is open, vide Article 4 of the Charter, to all other peace-loving States who accept the obligations of the Charter, and in the judgment of the U.N. are able and willing to carry out these obligations. Admission is effected by the General Assembly on the recommendations of the Security Council. In 1946, the Security Council unanimously recommended the admission of Afghanistan, Iceland, Siam and Sweden, and on the approval of the General Assembly these States became the accredited members of

the U.N. In the following year Pakistan and Yemen were admitted, and in 1948 Burma also became a member, bringing the membership to fifty-eight. But unfortunately there had been an unhealthy rivalry between the major powers of East and West on the issue of admission of new States<sup>18</sup> in their bid "for maintaining the existing balance in the General Assembly between their respective supporters". The deadlock continued till 1956, when matters were eased by the "package deal" enabling thereby the admission of 17 States. The number of total membership of the United Nations was 80 on January 1, 1957. At the end of 1964, it was 115, including Indonesia, which withdrew its membership in January, 1965. The total membership now (1969) is 125.

The Charter of the United Nations provides for the suspension and expulsion of members, but no provision has been made for withdrawal from membership. It has, however, been held that the absence of an express prohibition "must be deemed to have preserved the right to sever",<sup>19</sup> and Indonesia's withdrawal set the precedent. If a member-State persistently violates the principles of the Charter, it may be expelled from the Organization by the Assembly on the recommendation of the Security Council. Similarly, if the United Nations is taking preventive measures or enforcement action against a member-State, it may be suspended from exercising its rights and privileges by the General Assembly on the recommendation of the Security Council. The Security Council may, however, restore these rights whenever it deems necessary.

### ORGANS OF THE UNITED NATIONS

The Charter establishes six organs of the United Nations. It is through these organs that the manifold work of the United Nations is carried out. The principal organs are: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. The General Assembly, the Security Council and the Economic and Social Council are authorised to create subsidiary organs consistent with the provisions of the Charter.

**The General Assembly.** The General Assembly is the largest of all the organs of the United Nations. This is the great deliberative body of the Organisation which discusses every matter within the scope of the Charter. It consists of all the member-States, now numbering one hundred and twenty-five. Though each member-State may send up to five representatives to participate in its deliberations, yet member-States have only one vote each. Important questions as specified in the Charter—maintenance of peace and security, the election of members to other organs, the admission, suspension or expulsion of member-States, matters relating to trusteeship, and budgetary questions—are decided by a two-thirds majority of the members present and voting. All other questions are decided by a simple majority of those voting. The Assembly itself and voting by simple majority may add new categories of questions which

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18. Admissions are made by the General Assembly on the recommendation of the Security Council.

19. Oppenheim, *International Law*, vol. I, p. 411.



are to be decided by a two-thirds majority. Normally, the Assembly has to meet in regular session once every year, in September,<sup>20</sup> but special sessions may be convened at the request of the Security Council, or by the majority of the member-States. The President is elected by the General Assembly for each session. It also elects seven Vice-Presidents and appoints six Working Committees:—(1) Political and Security; (2) Economic and Financial; (3) Social, Humanitarian and Cultural; (4) Trusteeship; (5) Administrative and Budgetary; and (6) Legal—all appointed for the session. Besides, the Assembly also constitutes every session two procedural, two standing and five special committees.

The Assembly elects, by a two-thirds majority of those present and voting, non-permanent members of the Security Council for two years. The Charter requires that in electing these members, the General Assembly shall pay due regard to the contribution that they may make to the maintenance of peace and security and to the other purposes of the United Nations, and also to equitable geographical distribution. It also chooses all the eighteen members of the Economic and Social Council, and members to the Trusteeship Council. By a complicated system of parallel voting, the Security Council and the General Assembly, independently of each other, elect the fifteen judges of the International Court of Justice, no two of whom may be the nationals of the same country. Finally, the Assembly appoints the Secretary-General who is the head of the U.N.O. Secretariat.

But the most important functions of the General Assembly are initiative, discussion, study and recommendation. It has the right to discuss all questions and matters within the scope of the Charter and within the activity of the United Nations. The Assembly is competent to take up and discuss any question bearing on the maintenance of peace and security submitted to it by any member-State, by the Security Council or, in certain circumstances, by a non-member, and make its recommendations either to the Security Council or to the member-States direct. But there is one limitation which the Charter places on the powers of the General Assembly. While the Security Council is dealing with any dispute or situation, the General Assembly may not take up that matter for consideration and make recommendations on the subject unless the Security Council requests it to do so. The Secretary-General, therefore, informs the Assembly of any matters concerning peace and security which are being dealt with by the Security Council. Immediately the Security Council has ceased to deal with these matters, the Secretary-General informs the Assembly or the member-States, if the Assembly is not in session. The General Assembly has the right to call the attention of the Security Council to situations which are likely to endanger peace. Subject to the provision of not making a recommendation on a dispute or situation being dealt with by the Security Council, the General Assembly may recommend measures for the peaceful adjustment of any situation likely to impair the general welfare or friendly relations among nations. This includes violation of the purposes and principles of the United Nations as well. It is true that the recommendations of

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20. The 1964 Session was held in December.

the Assembly are not legally binding, but they do serve as an important instrument for bringing about the weight of public opinion of the world to bear upon the members of the United Nations. In particular, the right of discussion and accommodation comprises questions of co-operation in the maintenance of international peace and security including disputes brought before the Assembly, as well as the principles governing disarmament and regulation of armaments. The Assembly may call the attention of the Security Council to situations likely to endanger international peace and security.

The Assembly may also discuss the powers and functions of other organs of the U.N. and establish subsidiary organs necessary to the performance of its functions. The General Assembly is given wide power to initiate studies for the purpose of promoting international co-operation in political, economic, social, cultural, educational and health matters. The studies so initiated should include the encouragement of the progressive development and codification of International Law and realization of human rights and fundamental freedoms for all, without distinction of race, sex, language or religion. It, also, has the power to consider principles governing disarmament and the regulation of armaments and make recommendations thereto.

In promoting international co-operation in economic, social, cultural, educational and health matters, the General Assembly works mainly through the Economic and Social Council. The Council itself is the principal organ of the U.N., but it acts under the authority of the General Assembly. Finally, the General Assembly considers and approves the budget of the U.N., and decides on the share of expenses to be borne by each member-State.

**The Security Council.** The member-States of the United Nations have delegated the primary responsibility for maintaining world peace and security to the Security Council. Every member-State is pledged to accept and carry out the decisions which the Security Council makes. The Security Council originally consisted of a total of eleven members, five permanent and six non-permanent members. The five permanent members are the representatives of China, the United Kingdom, France, the U.S.S.R., and the U.S.A. But its membership is now increased to 15, five permanent and ten non-permanent members. The expanded 15-member Security Council took office on 1 January, 1966, in terms of the amendments to the U.N. Charter which were approved by the General Assembly in 1963, and which became effective on 1 September, 1965, after being ratified.<sup>21</sup> Under the terms of expansion, five of the ten non-permanent seats go to Afro-Asians (three Africans and two Asians), two to West Europe and others, and two to Latin America. The ten non-permanent members are elected by the General Assembly for a period of two years. The retiring member-State is not eligible for re-election im-

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21. India took a leading part in securing the amendments to the Charter in 1963. For a number of years, the Afro-Asians, who during the past decade had become the majority of the U.N. membership, had been seeking expansion to provide greater representation for themselves, but were repeatedly blocked through various objections.

mediately after the expiration of its term in order to enable other States to take their term at membership of the Security Council.

The Charter provides for a continuous session of the Security Council and every member-State, which is represented on the Council, is required to maintain a delegate at the Headquarters of the U.N. The Council must meet at least once every two weeks or as often as is necessary. The Charter permits the Council to hold its meetings at any place other than the Headquarters if that would facilitate the work of the Council. Each member of the Council has one vote and on matters of a procedural nature, votes of nine members are now necessary for decisions. On "substantive matters", too, the affirmative majority of the nine members, as against seven before 1 January, 1966, is required, but the affirmative majority of nine votes must include the concurring votes of all the permanent members. Any decision to impose sanctions, either economic or military, must be taken with the concurrence of the five permanent members, even if one of them is a party to the dispute which is before the Council. It means, that any permanent member by disagreeing with the majority can veto the proposition. This process of obtaining concurring votes of all permanent members is known as the unanimity of the "Big Five". There is, however, one exception to this rule. When the Security Council is considering peaceful settlement of a dispute, a member-State which is a party to the dispute abstains from voting.

Only the members participate and vote in the proceedings of the Security Council, but in certain circumstances countries not represented on the Council and even countries not members of the United Nations may participate in the proceedings without, however, the right of voting. This may happen, first, whenever the Council considers that the interests of any particular member-State are specially affected in the discussion of any question when it may ask that country to participate in the proceedings. Secondly, if a member is a party to a dispute under consideration of the Security Council, it must be invited to participate without vote in the discussion. Even States which are not members of the United Nations may be invited to participate in the discussion of any dispute to which they are a party on just conditions to be laid down by the Council. The Security Council elects its own President and it rotates month by month among members.

The position and authority of the Security Council is the most important. The Charter confers on the Security Council the primary responsibility of maintaining international peace and security. It further lays down that if member-States are parties to a dispute which is likely to endanger peace, they must seek solution by all possible peaceful means. If they fail to settle their dispute by negotiations, inquiries, mediation, consultation, judicial settlement or by other peaceful means, it is the duty of the Security Council to call upon the parties to settle their disputes. The Council is further empowered to investigate any situation which may cause international friction or dispute in order to determine whether the situation is likely to endanger peace and security of the world. Apart from the Security Council's own initiative, it is open to any one of the member-States to draw the attention of the Security Council or the General Assembly to such a situation or dispute. Even a non-member



State of the U.N. can bring any dispute to which it is a party to the notice of the Security Council or the General Assembly, provided it accepts beforehand the obligation of a peaceful settlement under the terms of the Charter. The Secretary-General of the U.N. may likewise bring to the attention of the Security Council any matter which, in his opinion, threatens the maintenance of international peace or security.

If in the opinion of the Security Council continuance of such a dispute is detrimental to world peace, or that peace has actually broken, or that an act of aggression has been committed, it may do either of these things: (1) call upon the parties to settle their disputes by peaceful means; (2) recommend appropriate procedures and methods for ending the dispute; (3) propose the actual terms of settlement. If one or both the parties to the dispute fail to comply with the recommendations of the Security Council, the Council may ask other member-States of the U.N. to either break off diplomatic relations with the country or countries concerned, or to cut all rail, sea, air, postal, telegraphic, radio and other communications, or to break economic relations partially or completely with the offending State or States. Should the Security Council deem that such measures are inadequate or have proved inadequate, it is competent to take such military action as may be considered necessary to meet the situation. Every member-State is pledged, vide Article 43, to supply to the Council on its call such military forces as are needed to meet the situation. The Security Council maintains a Military Staff Committee to assist and advise it on all its military requirements including the employment and command of the armed forces placed at the disposal of the Council and on the regulation of armaments and disarmaments. This Committee consists of the Chief of Staff, or their representatives, of the permanent members—China, France, the United Kingdom, the U.S.S.R. and the U.S.A.

In order to enable the United Nations to take urgent military measures, member-States are required to immediately make available their national air-force contingents for combined international action. The Security Council is required to make the plans for the application of armed forces, with the assistance of the Military Staff Committee and the Charter requires the members of the United Nations to join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

The other functions of the Security Council are: to recommend the admission of new members to the General Assembly; to recommend to the General Assembly the suspension of the rights and privileges of any member-State against whom it is taking preventive or enforcement action; to recommend to the General Assembly the expulsion from the U.N. of a member-State persistently violating the principles of the Charter; to convoke a special session of the General Assembly by a request to the Secretary-General; and to establish subsidiary organs for the due performance of its functions. All the functions of the United Nations in respect to Trust areas classified as "Strategic" are exercised by the Security Council. It votes simultaneously, but independently of the General Assembly in the election of the Judges of the International Court of Justice. When a party to a case fails to carry on a judgment of the Court, the

Security Council may make, at the appeal of other party, recommendations or decide upon measures to be taken to give effect to the judgment. The Atomic Energy Commission, set up in 1946, reports to the Security Council and receives directions from it on matters affecting the maintenance of peace and security. Finally, the Secretary-General is appointed by the General Assembly on the recommendation of the Security Council.

**The Economic and Social Council (ECOSOC).** The most striking feature of the Charter is the emphasis it lays on the constructive tasks of peace. But the authors of the Charter were also aware "that economic and social maladjustments are often the diseases of which war is the final symptom and they envisaged peace not merely as a period of non-shooting but as the zestful pursuit of the common good of all mankind." This purpose of the U.N. finds a prominent place in the Preamble of the Charter which proclaims that the peoples of the United Nations are determined "to promote social progress and better standards of life in larger freedom." Article 1 states that it is a primary purpose of the United Nations to achieve co-operation in solving international problems of an economic, social, cultural or human rights and fundamental freedoms without distinction of race or sex, language or religion.

These purposes of the United Nations are realized through the Economic and Social Council, ECOSOC. The delegates at the San Francisco Conference described the Council as potentially the most important of the organs of the United Nations. It consisted of eighteen members prior to the amendment of the Charter, and now since January 1, 1966, its membership is twenty-seven, all elected by the General Assembly. Nine, as against six prior to January 1966, members are elected each year and the normal term of office is three years, that is, one-third members retiring each year. Retiring members are eligible for re-election. Each country elected to the Council has one representative with one vote and all decisions are taken by a simple majority of those present and voting. The Council is also required to invite any member of the United Nations to participate, without vote, in its deliberations on any question which is of particular interest to that member. It may also make arrangements for representatives of international specialised agencies to participate, without vote, in the activities of the Council and its discussions. The Council elects its own President for one year and it meets at least three times in a year.

As per Article 55 of the Charter, the Council is responsible for promoting:

(a) Higher standards of living, full employment, and conditions of economic and social progress and development;

(b) Solutions of international economic, social, health and related problems, and international cultural and educational co-operation;

(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion.

For the realization of its purposes the Economic and Social Council performs the following special functions:

(1) It makes and initiates studies and reports on all matters within its scope either directly or through an expert commission.

(2) After its investigations are complete the Council makes its recommendations to the General Assembly or to the member-States or the specialised agencies.

(3) The Council may also submit draft conventions to the General Assembly which are sent, after ratification, to the member-States for their acceptance and implementation.

(4) The Council makes arrangements with the member-States to obtain their reports on the steps taken to give effect to its recommendations, and to communicate its observations thereupon to the General Assembly.

(5) The Council is also entrusted with the duty of submitting information to the Security Council whenever demanded and thus assist it in the discharge of its functions.

The Council works through several Commissions, Standing Committees, ad hoc Committees, and Special Bodies. The Commissions are of two types: functional and regional. Under the first come Economic and Employment, Transport and Communications, Statistical, Human Rights, Social Status of Women, Narcotic Drugs, Fiscal and Population problems. The regional Commissions are: the Economic Commission for Europe, the Economic Commission for Asia and the Far East, the Economic Commission for Latin America, the Economic Commission for Africa, etc.

There are four Standing Committees and four special bodies: The Permanent Central Opium Board, the Supervisory Body, the International Children's Emergency Fund, and the United Nations Appeal for Children.

**The Trusteeship Council.** The Trusteeship Council provides for an international trusteeship system for administration and supervision of:

(1) the territories placed under it by means of trusteeship agreements submitted by the administering powers and approved by the U.N.;

(2) the territories held under the mandate system of the League of Nations, and territories detached from enemy States as a result of the Second World War; and

(3) the territories voluntarily placed under the trusteeship system.

The aims of the trusteeship system are fourfold: (i) to further international peace and security, (ii) to promote advancement of the people and their development towards self-government or independence depending on the circumstances of each country, the freely expressed wishes of the people and the terms of each trusteeship agreement, (iii) to encourage respect for basic human rights and the recognition of the inter-dependence of the people of the world, and (iv) to ensure equal treatment for all members of the United Nations and equal treatment and justice for their nationals in social, economic and commercial matters so long as this does not conflict with the welfare of the inhabitants. The Trusteeship



Council, however, functions under the authority of the General Assembly.

The Council is composed of permanent members of the Security Council—China, France, U.S.S.R., United Kingdom, United States, member-States which administer trust territories; and finally, other States elected by the General Assembly in order to maintain equality of members between members who administer trust territories and those who do not. The Trusteeship Council must meet at least twice a year and the President is elected at each regular session. Each member-State of the Council has one vote, and all decisions are taken by majority of members present and voting.

Supervision over the administration of the trust territories is exercised by the General Assembly, but in reality it is carried on by the Trusteeship Council. It receives reports from the administration of trust territories, receives complaints and petitions from the peoples of the trust territories and examines them in consultation with the administered authority, makes annual inspections of the trust territories, and takes such actions which are in conformity with the terms of the trusteeship agreements. The Council is also charged with the formulation of questionnaire on the political, economic, social and educational advancement of the inhabitants of each trust territory within the competence of the General Assembly and is required to make an annual report to the General Assembly upon the basis of such questionnaire.

**The International Court of Justice.** One of the purposes of the United Nations is to adjust and settle international disputes in conformity with justice and International Law. It was, accordingly, deemed essential to establish a judicial organ of the U.N. and it is known as the International Court of Justice. Although the Charter describes the International Court of Justice as "the principal judicial organ of the United Nations, yet it does not debar the member-States from referring their disputes to other tribunals for peaceful settlement." As all the members are sovereign States, it is, therefore, not possible to summon any State against its will to submit to the jurisdiction of the Court. Moreover, the Court cannot proceed to adjudicate a dispute merely because one State files a case against another. The other party, too, must agree to the jurisdiction of the Court.

The jurisdiction of the International Court of Justice extends to cases which involve the interpretation of a treaty, questions of international law, the existence of any fact which, if established, would constitute breach of an international obligation, and the nature or extent of the reparation to be made for wrongs suffered by a State. Several nations have signed the so-called "Optional Clause" by which they have agreed that the Court may try all cases or cases relating to specified subjects, which may arise in the future. But most countries have specified a limited number of subjects on which they will accept jurisdiction. Once a case has been brought before the Court, the parties to the dispute must abide by its decision. Should any party to a case before the Court fail to perform its obligation under a judgment of the Court, the other party may bring the matter before the Security Council. The Security Coun-

cil is empowered by the Charter to make recommendations or decide upon measures to be taken to give effect to the judgment.

The Court consists of fifteen members elected independently by the General Assembly and the Security Council. The Judges should be persons of high moral character and possess qualifications required in their respective countries for the highest judicial offices or they should be **Juris Consults** of recognised ability in International Law. No two of the Judges may be nationals of the same State. The normal term of Judges is nine years, although, in the first election, five Judges were chosen for a term of three years, five for six years and the other five for the full nine-year term. The Judges elect from amongst themselves the President of the Court for a term of three years. The Court is permanently in session, except during judicial vacations. A quorum of nine Judges is necessary to hear a case and all decisions are by majority of Judges present. If the votes are equal, the President has a casting vote. Where there is a Judge on the Court of the nationality of one party to a dispute and not of the other, the other party is permitted to choose a judge for the hearing of that dispute.

In addition to deciding cases, the Court can be asked by the General Assembly and Security Council to give advisory opinions on any legal question. The other organs of the United Nations and the specialised agencies, subject to the approval of the General Assembly, may ask the Court for advisory opinion on matters within their competence.

The permanent seat of the Court is in the Netherlands at The Hague, but it can meet elsewhere when it thinks desirable.

**The Secretariat.** To carry out the administrative responsibilities of the U.N., and to assist its organs in the due performance of their functions, the Charter established a Secretariat, consisting of a Secretary-General, and such staff as is required by the Organisation. The Secretary-General, who is the chief administrative officer of the U.N., is appointed by the General Assembly on the recommendation of the Security Council for a five-year renewable term. The first Secretary-General was Mr. Trygve Lie. Dag Hammarskjöld of Sweden, the second Secretary-General, became the Congo martyr. The present Secretary-General is U Thant.

The Secretariat staff is appointed by the Secretary-General under regulations by the General Assembly. The main consideration in the selection of the personnel of the Secretariat and the conditions of service is the highest standard of efficiency, competence and integrity. But the Charter also provides that due regards shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. The Secretariat has nine departments each under an Assistant Secretary-General. They are: Security Council Affairs; Economic Affairs; Social Affairs; Trusteeship and Information from Non-Self-Governing Territories; Public Information; Legal Problems; Conferences and General Services; Administrative and Financial Services; and Technical Assistance Administration.

On the Secretary-General devolve important functions in addition

to the control and direction of the Secretariat. The Charter provides that he shall act in his capacity at all meetings of the General Assembly, Security Council, Economic and Social Council, and Trusteeship Council, and perform such other functions as are entrusted to him by these organs. He is required to submit an annual report to the General Assembly on the work of the U.N. He is also empowered to bring to the notice of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security. At the request of majority of member-States or of the Security Council, the Secretary-General summons special sessions of the General Assembly. Every treaty and every international agreement entered into by any member-State must be registered by the Secretariat and published by it. Declarations by States, parties to the Statutes of the International Court of Justice accepting the Court's compulsory jurisdiction, are to be deposited with the Secretary-General. In fact, the duties of the Secretary-General and his Secretariat are many and arduous. The immense amount of preparatory work—from the drafting of research documents surveying a problem to the arrangements for the convenience of the delegates—falls upon the Secretariat and when decisions have been taken, it is the duty of the Secretary-General and his staff to help implement those decisions by continuous administrative action. To sum up, it is the Secretariat that keeps the machinery of the United Nations going and on its efficiency depends a great deal of the effectiveness of the Organisation.

**Specialised Agencies.** Besides the six organs, described above, there are fourteen specialised agencies of the United Nations which deal with specific international problems. The most important of them are: The International Labour Organisation (I.L.O.); the Food and Agricultural Organisation of the United Nations (F.A.O.); the United Nations Educational, Scientific and Cultural Organisation (U.N.E.S.C.O.); the International Monetary Fund (I.M.F.); the World Health Organisation (W.H.O.) and the International Trade Organisation (I.T.O.). The International Labour Organisation was established in 1919 and is the legacy of the League of Nations. Its aim is to improve labour conditions in regard to wages, hours of work, and conditions of work. It is a tripartite organisation and includes representatives of the governments, the employers and the employees. The Food and Agricultural Organisation came into being in October 1945, with a view to collecting, analysing, interpreting and disseminating information relating to nutrition, food and agriculture. The UNESCO, the United Nations Educational, Scientific and Cultural Organisation, as it is popularly known, grew out of the International Intellectual Co-operation Organisation of the League of Nations. Its aims can best be described in the words of the Preamble to its own Constitution, which declares that "since war begins in the minds of men, it is in the minds of men that the defences of peace must be constructed." And in the articles of the Constitution it is provided that "the purpose of the organisation is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law, and for the human rights and fundamental freedoms which are affirmed for the people of the world without distinction, sex, language or religion by the Charter of the United Nations." The UNESCO, in brief,



aims at promoting international peace and security through education, science and culture and thereby to further universal respect for justice, rule of law, human rights, and fundamental freedoms for all the peoples. It is not concerned with the task of solving any urgent political problems, as the Security Council and the General Assembly do, but it is to take positive steps to promote peace and international understanding through the sustained educational campaign of the new philosophy of humanism.

The organisation works through a general conference which is held now once in two years, an Executive Board and Secretariat. The general conference lays down the policies and main lines of work of the organisation. The Executive Board, composed of 22 members, is the body responsible for the execution of the programme adopted by the conference. The Secretariat of the organisation is the pivotal force which is responsible for the day-to-day administration and for implementing the programme as adopted by the general conference and endorsed by the Board.

The primary objectives of the plan for a Monetary Fund are to re-establish an international monetary system with stable currencies and to provide machinery for international monetary collaboration and co-operation with a view to attaining and maintaining a high level of international trade and thus of production and employment. The International Bank for Reconstruction and Development is an essential adjunct to the Monetary Fund. The primary purpose of the Bank is, as its title indicates, to assist in the reconstruction and development of member-countries and this purpose is to be achieved by facilitating the investment of capital for productive purposes.

The World Health Organisation came into existence on April 7, 1948. Its functions are to co-ordinate the international health work, to eradicate epidemic, endemic and other diseases, to promote the improvement of nutrition, housing, sanitation, recreation, economic and working condition and other aspects of hygiene, to develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products.

The least spectacular but in some ways the most continuative aspect of the United Nations' work has been in the field of providing economic co-operation for the development of low-income countries. Its own programme of assistance has been relatively small, but careful planning has given them an impact out of all proportion to their size. The unique contribution of the U.N. in this field was its emphasis on the need to provide technical "know-how" to the developing countries. U.N. assistance began with a small technical assistance programme in 1948. Alongside its growth, a "special fund" providing technical assistance for pre-project planning and man-power and scientific development was begun in 1959, and the two were merged in 1966. Today almost \$200 million a year are disbursed under merged programme.

### THE U.N. AT WORK

We have described the structure and functions of the most comprehensive international organisation hitherto established. The United Nations can claim definite superiority, in some respects, over the old League

of Nations. It has inspired from the very beginning more international confidence as it is representative of more wide interests and is a comprehensive organisation than the League. The Charter of the United Nations, as it emerged from the exhaustive discussions at San Francisco, is indicative of the efforts of fifty delegations, representing great powers and small, of their will to peace and security, and "better standards of life in larger freedom." It provides for the means whereby the representatives of sovereign States may speak as well as listen, and may, by free mutual discussion and patient negotiation, reconcile their viewpoints in the interests of the world peace and progress. The inclusion of the United States of America and Soviet Russia gives the United Nations a more solid foundation. Its universality of membership now, one hundred and twenty-five, is expressive of the strength behind the organisation and the strong determination of the nations uniting together to achieve the basic aims of the United Nations. Moreover, the Charter of the United Nations, as one writer puts it, is more realistic in so far as it places the responsibility for security where power lies. The Security Council is vested with the primary responsibility of maintaining world peace and security. The Charter clearly specifies how these powers are to be used and every member of the United Nations is pledged to accept and carry out the decisions of the Security Council. The decisions of the Security Council are not made to remain a mere threat. It may call upon the member-States to break off diplomatic relations with an offending State or declare a blockade or use economic sanctions against it. Should the Council consider that these measures are inadequate, it may take all military action required by the situation. Every member of the United Nations is pledged by Article 43 to supply on its call with the armed forces, the assistance and the facilities it requires including rights of passage.

Then, the Security Council is in continuous session and each member-State is permanently represented at the Headquarters. Eternal vigilance, of course, is the price of peace. Eternal vigilance and prompt action may well mean the difference between security and disaster and, by the rules of procedure, the Security Council meets as often as is necessary, and at least once every two weeks. The Charter also permits the Council to hold its meeting at any place other than the Headquarters, if that would facilitate the Council's work. The Council is empowered to investigate on its own initiative any situation which may, in its opinion, cause international friction or dispute. The Charter also allows any party to a dispute, any other member-State or the Secretary-General, to bring to the attention of the Security Council any actual or potential breach of peace for collective action by it. Furthermore, unlike the League of Nations, the Charter of the United Nations improved the prospects of collective action by requiring a 7-4 majority prior to January 1966, and 9-6 now instead of a unanimous decision.

There is impressive evidence that in the implementation of its resolve to attack the causes of not only war but of all conflicts, the United Nations, during its career of two decades, has devoted almost equal attention to keeping of peace, decolonization and stimulating economic co-operation between the rich and the poor nations. Particularly notable have been the achievements of the U.N. Agencies, such as ECOSOC,

UNESCO, UNICEF, WHO, and FAO. Mr. Talari says that, "before another decade is over, the growing generation in the developing countries will have been assured of at least a square meal a day, opportunities for growth and education and freedom from disease". If this is achieved United Nations really justifies its existence.

The United Nations has also admirably succeeded in its pursuit of decolonization and the rise of one Asian and African country after another to independence. The process of decolonization can be said to have begun after World War I when the Turkish and German Colonies were made mandates of the League of Nations. But except in the case of "A" class mandates there was no obligation placed on the mandatory powers to develop their charges with the eventual objective of making them fully independent. After the United Nations came into being new trusteeship agreements were signed in 1945 and 1946 for all the mandates that survived World War II. By 1961, all the hitherto trust territories had achieved independent status and the work of the Trusteeship Council, which supervised their administration, was virtually concluded. The principal exception is South-West Africa for which a special committee still exists. There is also a committee for information on non-self-governing territories. When the founding fathers signed the Charter, the United Nations consisted of 50 members, of whom only nine came from Asia and Africa. Today, the United Nations consists of one hundred and twenty-five members, of whom the Afro-Asians command a comfortable majority. The Afro-Asians have also succeeded in securing amendments to the Charter, for expanded Security Council and the Economic and Social Council.

The record of the United Nations in keeping peace and avoiding conflicts if not spectacular is, no doubt, commendable. The United Nations interposed its physical presence between the Arabs and the Israelis in the Palestine conflict and contributed significantly to the liberation of Indonesia and to the end of the Greek-Albanian conflict. It maintains ceasefire in Kashmir despite heavy odds. The Tashkent Declaration, which enabled the USSR to persuade India and Pakistan to abide by the resolution of the Security Council, was a great step forward in dealing with a critical situation, which but for the initiative of the U.N. would have certainly led to a large-scale war. The United Nations can also claim to have brought about cease-fire in the Arab-Israeli war in June 1967. It intervened effectively in the Suez crisis, prevented the collapse and disintegration of the Congo and calmed the civil strife in Cyprus and in keeping peace between the Greek and the Turkish Cypriots.

In spite of this credit side, there are certain serious defects in the scheme of the United Nations. The attitude of the victors to the defeated powers was exactly the same as it had been after World War I. The smaller States and even the large ones, which are militarily and economically less advanced, still suspect the United Nations as a mere tool in the hands of the Big Powers. The United Nations is based on the sovereign equality of nations, but, as Field Marshal Smuts, one of the outstanding statesmen at the San Francisco Conference, observed, "equality of status does not mean equality of functions". The war-time allies and the promoters of the United Nations are divided into two power blocs



and engaged in a constant cold war. Possession of atomic weapons by both blocks with systematic race in stockpiling and such other developments, make the people at large believe that it is mockery of the United Nations. In his Tenth Annual Report of the United Nations, the then Secretary-General, Mr. Dag Hammarskjöld, observed that the actual establishment of an agreed international system for the control and reduction of armaments and armed forces "can take place only in an atmosphere of confidence, trust and understanding among the nations, an atmosphere which has not yet come into being." When vital questions remain unresolved, it is natural that the common man may think of the United Nations as an organisation of 'Disunited Nations'.

The United Nations Organization is a combination of strange bedfellows. There are old jealousies and ideological differences between the "Big Five" and this we witness every day in the proceedings of the General Assembly and the Security Council. Past, but not forgotten, differences still exist between Russia and the United Kingdom. Disguised economic rivalries persist between Britain and the United States, and during the recent times with the waning of Britain's political and economic prestige the inward gulf has widened. The differences between Russia and the United States are irreconcilable, though fluctuating and without any sense of prediction. With the open rupture between Russia and China the situation has become still more intriguing. If the Chinese Nationalist Government, now located in the Island of Formosa, had been completely ousted or at least not propped up by the United States, the position would have been a little simple. The Government of the People's Republic of China would have, *ipso facto*, stepped into the shoes of the old Government in the seat allotted to China in the General Assembly and in the Security Council. Since 1950, the issue of China's representation has been before the General Assembly in one form or the other. And every time it is voted down by the lobbying power of the United States. In fact, the whole thing has become a hardy annual, the protagonists and antagonists going through the motions. In the 1968 General Assembly the motion to seat Communist China and expel the Kuomintang Chinese delegation was rejected by a decisive margin of 58 votes to 44 with 23 abstentions. In 1967, the margin was 58 votes to 45 with 17 abstentions.

The persistent refusal of the Assembly in giving recognition and representation to the People's Republic of China is a clear violation of the third principle of the Atlantic Charter, which forms the cornerstone of the United Nations. This principle states: "They respect the right of all peoples to choose the forms of government under which they live ....". Exclusion of People's China is also a great blow to the moral basis of the United Nations in that one of its promoter States should openly express by its words and actions such a deep drawn hatred against a particular form of government. With the explosion of a nuclear device by China, early in October 1962, and its avowed expansionist designs, it has become imminently important that the People's Republic should be admitted into the United Nations so that the proposals for banning of nuclear weapons and information should have any effect on it. In his broadcast message on the eve of the United Nations Day, 23 October 1964, Dr. Radhakrishnan, President of India, said: "That is

why even after trouble with China in 1962, we have been pleading for the admission of China into the United Nations. If a large State like China is excluded from the deliberations of the United Nations, the resolutions of the United Nations would have no binding character on China and thus will not have much practical utility".

Then, there could not be any unanimity on the Japanese Peace Treaty, and the Peace Treaty itself was a mere show of power politics. The most regrettable part of the entire transaction has been that the settlement of peace terms with Germany is still in abeyance, and yet one bloc is determined to re-arm Western Germany and make it a member of the Western European Union, and the other has made East Germany its own stronghold with Berlin as the spark point in the entire German problem. It appears as if Germany would remain permanently divided into two hostile zones and under two hostile influences unless the Germans themselves determine otherwise. But how can they do it under the existing conditions?

Five Great Powers—the United States, the United Kingdom, the Soviet Union, France and China—were given permanent seats on the Security Council and the right of veto, because the Authors of the United Nations Charter felt that they were in a position to make an exceptional contribution to the maintenance of international peace and security. But it has been maintained that the procedure of voting in the Security Council was designed to shield the "Big Five" against their own sins. On all substantive matters the affirmative majority of the seven originally, nine members now is required. This majority must include the concurring votes of all the permanent five members. It means that one of the "Big Five" can vitiate the decisions and discussions of the Security Council at any stage.<sup>22</sup> It also means that a friendly State to any of the five powers can make the decisions of the Security Council ineffective. This indirect veto may be used and it has been used for expediency rather than justice.

It is important to note that there were heated discussions on the subject of veto at the San Francisco Conference. The non-Great Powers of the Conference, who called themselves "The Little Forty-five", fought hard for the modification of the veto. The Big Five, however, stood solidly together and resisted any material modification. Churchill called the veto "a shield for the strong and a mockery for the weak". "The Little Forty-five" ultimately reconciled to the veto without illusions. "When we, Little Powers, are fighting", said a Latin American delegate at the San Francisco Conference, "the Great Powers will stop us. But, if and when the Great Powers are at loggerheads, God help us."

The provision of coercive action against the aggressive States was really intended to coerce the smaller States. The Big Powers may themselves disturb international peace and repudiate the principles which they enjoin and even force upon smaller States. Lord Winster, intervening in the debate in the House of Lords, 11 October 1945, said: "This

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<sup>22</sup>. Till December 1968, the Soviet Union has exercised this right 104 times, France 4 times, Britain twice and "Nationalist China" only once. The United States alone of the Big Powers has never made use of it.

Organization (the United Nations) will be one for keeping small boys in order by prefects who themselves are exempt from the rules that they will administer". Events in Egypt, Hungary, Jordan, the Lebanon, and Congo prove it.

On its twenty-third year of life, the United Nations should have come of age. The fact that in some respects this has not yet happened can be ascribed directly to its member-States' shortcomings. "If the first two decades of its life were periods of foundation and growth, the third, which should have been the decade of consolidation, is in grave danger of becoming one of crisis". The responsibility for all this does not depend upon any one particular State or a group of nations, but with all of them. Major powers have generally been responsible for refusing to grant to the United Nations an adequate mandate for the carrying out of its peace-keeping functions. At the end of 1963, more than 150 million dollars were owing to the United Nations—95 millions on account of UN action in Congo, 33 millions on account of action in the Middle East, and 19 millions owing to the non-payment by certain members of their normal contributions. The Soviet Union, France, Nationalist China and the Congo refused to pay anything towards the Congo action; the Soviet Union and Nationalist China refused to contribute to UN action in the Middle East and these two together with Argentina, were in arrears with their normal contributions. The Soviet Union alone had accumulated a debt of 58 million dollars. The arrears have since then mounted to a staggering figure. The United Nations is, thus, threatened with the risk of seeing even its normal activities brought to a standstill for financial reasons.

A majority of the newly emergent States have periodically surrendered to the temptation to use the United Nations as a forum of incessant propaganda to further their own national interests. The most recent blow was given to this world body by its own machinery, the International Court of Justice by its decision on the South-West Africa issue. A group of Afro-Asian countries were so much disturbed on this decision that they refused to pay the expenses incurred by the International Court of Justice during the hearing on South-West Africa. Whatever be their feelings on this account defiance to the authority of the United Nations neither contributes to the achievement of its purposes nor it adds to the prestige of a world body.

It is, therefore, not surprising that in his broadcast on the 23rd Anniversary of the United Nations, President Zakir Hussain would have showed a certain amount of scepticism regarding its effectiveness. It is true that the organisation has not been able to play a significant role in the past as well as in most of the crises that have hit the world in recent years. In the case of Viet Nam and Czechoslovakia the United Nations has been immobilised because of the unwillingness of a majority of the member-States to incur the displeasure of the super-powers. It has been equally ineffective in dealing with troubles in which the super-powers have not been involved. Nigeria is being ravaged by a civil war without the United Nations being able to do anything about it. The sanctions approved by it against the racist regime in Rhodesia are being violated openly not only by South Africa and Portugal but also by private businessmen from West Germany, France, Italy, Japan and so on. This is



not all. The United Nations has failed to mobilise support among rich nations for assisting the development of poor and predominantly agricultural countries on a sustained and sufficiently generous basis. B. R. Bhagat, India's representative at the 23rd Assembly of the United Nations, pointed out in his address that all under-developed countries were disappointed with the results of the second UNCTAD Conference that was held in New Delhi in the winter of 1967.

The U.N.'s failures are, indeed, many. But they were the collective failures of the U.N.'s members. It is altogether cynical to say, as some high personages in France and elsewhere are often tempted to say, that the U.N. has lost its usefulness. Even if the Great Powers, just two in number, no more need the world organisation, countries like India certainly do. Trygve Lie, the first U.N. Secretary General, in his first report to the General Assembly, said, "The United Nations is no stronger than the collective will of the nations that support it. Of itself it can do nothing. It is a machinery through which the nations can co-operate. It can be used and developed in the light of its activities and experience, to the untold benefit of humanity, or it can be discarded or broken. As in the control of the atomic power, the choice is between life and death, the failure of the United Nations would mean the failure of peace, the triumph of destruction". Lasting peace can only be established if nations fervently strive to bring the free peoples closer to the goal of peace acting on the advice of Abraham Lincoln, "with malice toward none, with charity for and firmness in the right as God gives us to see the right." This should be the firm resolve and dedication of all the nations.

### SUGGESTED READINGS

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|----------------------------|---|
| Bentwich & Martin          | : <i>Charter of the United Nations.</i>                               |
| Brierly, J. L.             | : <i>The Law of Nations</i> , Chaps. I-II.                            |
| Burns, C. D.               | : <i>Political Ideals</i> (1929).                                     |
| Chase, E. P.               | : <i>The United Nations in Action.</i>                                |
| Curtis, L.                 | : <i>The Way to Peace.</i>  |
| Dickinson, E. D.           | : <i>The Equality of States in International Law.</i>                 |
| Eichelberger, C. M.        | : <i>U.N.: The First Twenty Years.</i>                                |
| Evatt, H. V.               | : <i>The Task of Nations.</i>   |
| Evatt, H. V.               | : <i>The United Nations.</i>  |
| Fenwick, C. G.             | : <i>International Law</i> , Chaps. II-V.                             |
| Goodrich, L. & Hambro, E.  | : <i>The Charter of the United Nations.</i>                           |
| Mattern, J.                | : <i>Concepts of State: Sovereignty and International Law.</i>        |
| Morrison, H. S. and others | : <i>The League and the Future of the Collective System.</i>          |
| Oppenheim, L.              | : <i>International Law</i> , Vols. I, II.                             |
| Sidgwick, H.               | : <i>Elements of Politics</i> , Chaps. XV-XVIII.                      |
| Schuman, F. L.             | : <i>International Politics.</i>                                      |
| Sharp, W. R., and Kirk, G. | : <i>Contemporary International Politics.</i>                         |
| United Nations             | : <i>Handbook of the United Nations and the Specialised Agencies.</i> |
| United Nations             | : <i>Year Book of the United Nations.</i>                             |
| United Nations             | : <i>These Rights and Freedoms.</i>                                   |
| Westlake, J.               | : <i>International Law.</i>   |
| Willoughby, W. W.          | : <i>Fundamental Concepts of Public Law</i> , Chaps. XVI, XVII.       |

PART TWO

# THE ORGANISATION OF THE STATE





## Forms of Government

**Distinction between forms of State and forms of Government.** Some writers on Political Science classify the forms of government as the forms of the State. But this is wrong. There can be no forms of State. All States are alike in their nature and all combine the same essential elements—population, territory, organisation and unity or sovereignty. Differences in population and territory do not make any difference in their status of Statehood. A distinction is sometimes made between a City-State, a nation-State, and a world empire. But this distinction has no practical value in Political Science, for classification of States on the basis of territory and population is a mere historical description, and an act of a fallacy coming from Aristotle's time when no distinction was made between the State and Government. To classify States on the basis of unity is also impossible. All States are sovereign and all sovereign States are equal. It is, therefore, illogical to classify equals.

But States do differ in their organisation. The organisation of the State is its government and it is through the instrument of the government that the State formulates, expresses, and realises its purposes. The purpose of every State is the same, the well-being of its people, and the form of government is the expression of the way in which the purpose of the State is to be realised. This involves the problem of determining in whose hands is vested the legal authority of the State, to what extent is actual use made of it, what are the instrumentalities or organs employed in its use, and what rules and procedure are followed by such organs in performing their functions. These differences are wide from State to State and matter a good deal in differentiating the organisation of one State from another. The form of government is, therefore, the actual basis of division.

### TRADITIONAL CLASSIFICATIONS OF GOVERNMENTS

**Aristotle's Classification.** The traditional classifications of governments follow the course set by Aristotle. Aristotle, however, was not original. He borrowed from Plato as Plato had borrowed from Socrates. Aristotle based his classification on two principles:

- (1) the number of persons who exercise supreme power, that is, the location of sovereignty within the State, and
- (2) the ends they seek to serve.

Applying the first and the numerical principle, Aristotle said, if sovereignty resided in one person, it is **Monarchy**, if it resided in a small minority of the population, it is **aristocracy**, and, if it resides in a large proportion of the population, it is **polity**. Having done it, Aristotle, then, proceeded to distinguish between the "normal" and "perverted" forms of the State basing his conclusions on the ends which the rulers sought to serve. By a **normal** State, Aristotle meant one guided and ruled by law and justice. The ruler or the rulers in such a State always aimed at the good of the community as a whole. By **perverted** State, he meant, one guided and ruled by the selfish and capricious, without law and without restraint. The ruler or the rulers in such a State were selfish and he or they exercised power vested in them for his or their own benefits rather than for the benefits of the community as a whole.

**Monarchy, Aristocracy and Polity** were, according to Aristotle, **normal** forms of the State. In their **perverted** form they became **Tyranny, Oligarchy and Democracy**. Tyranny was the degenerated form of Monarchy, Oligarchy the degenerated form of Aristocracy and Democracy the degenerated form of Polity. For Aristotle, Monarchy was the best, and tyranny worst. Tyranny placed in the hands of the king arbitrary control over the lives and fortunes of the citizens and all affairs of the State were directed to his own good. In Oligarchy, the wealthy few ruled for selfish ends and they used their powers and privileges for the oppression of the common people, Democracy meant rule of the mob and in a democratic State interests of none were safe as there would be confusion all round.

Although Aristotle held Monarchy, the rule of a true and good king, would be the best, but, at the same time, he recognized certain practical difficulties in attaining the best. He, thus, concluded that Polity was the best; a democratic form of government with constitutional guarantees as a student of Political Science would now define it. Aristotle pointed out that if polity were to disintegrate into its perverted form the result would not be so bad as the perverted forms of Monarchy and Aristocracy, namely, Tyranny and Oligarchy.

Aristotle's classification may be stated in the following tabular form:

	Normal	Perverted
<u>Rule by one</u>	<u>Monarchy</u>	<u>Tyranny</u>
<u>Rule by Few</u>	<u>Aristocracy</u>	<u>Oligarchy</u>
<u>Rule by Many</u>	<u>Polity</u>	<u>Democracy</u>

Two points about this classification deserve attention. First, Aristotle draws a clear distinction between aristocracy and oligarchy, where as modern usage does not differentiate between the two and we often use them synonymously. Secondly, democracy for Aristotle had not the same meaning as it has for us. He regarded it as a **perverted** form, a mob rule, whereas we regard democracy as the best form of government. The perverted form of democracy, according to the modern use, is **mobocracy or ochlocracy**. Moreover, modern Sociologists have clearly shown that there is no government of the many. All governments

are really governments of the few, or, in fact, oligarchies.) Nowhere in the world do the people or even substantial number of them rule. In all States the exercise of government is left to a few hands, while the determination of policy is actually in the hands of a yet smaller minority, the political leaders. The Cabinet in Britain is the supreme directing authority, "the magnet of policy", as Barker calls it, and it now consists of sixteen or eighteen members. The actual determination, control and direction of cabinet policy rests still in a few hands, the inner cabinet. The Executive power in the United States of America is vested in the President. He has his cabinet, but the role of the cabinet is simply advisory. The policy flows from the President, though it may be influenced by the advice tendered by the Cabinet.

**Cycle of Aristotle's political change.** Like his teacher Plato, Aristotle, too, subjected his forms of State to cyclic political changes. Aristotle did not merely classify the various forms of State. He even marked out how in the course of history one form of State had given place to another. Just as the wheels of a cycle revolve, so do the forms of State. His cycle of political change starts from monarchy. The first State, he says, was monarchic and the king governed his people with love and justice dedicating himself to their service. In the course of time kings forgot their duty of the people. With the degeneration of the character and aims of the monarchs, it became Tyranny when government was no longer directed towards the public good. But a tyrannical government could not continue for long. The people ultimately revolted and succeeded in overthrowing the rule of the tyrant and substituted it by a government of the few talented persons who were prompted by the ideas of the common good. Aristocracy, a government of the few for the welfare of the people, took the place of monarchy. With the lapse of time, the best few also degenerated. The ideals of public spirit which inspired them in the beginning disappeared. Aristocracy lapsed into Oligarchy. But the people could not for long tolerate a government the aim of which was the benefit of the ruling class alone. When the opportunity came, citizens as a whole made a successful revolt against such authority and established a Polity, the supreme power being vested in the hands of a large proportion of the population and it was used by them for the common good. When Polity became perverted it was substituted by Democracy.

Democracy, according to Aristotle's terminology, was a rule by the mob which had always been an intolerable confusion. There was neither certainty nor stability. It was at this stage that some powerful warrior-statesman, imbued with the spirit of service for the common-weal, came to the forefront and took the reigns of the Government in his own hands. Monarchy was again established and, thus, revolved Aristotle's cycle of political change. "The first governments," says Aristotle, "were kingships, probably for this reason, because of old, when cities were small, men of eminent virtue were few. They were made kings because they were benefactors, and benefits can only be bestowed by good men. But when many persons equal in merit arose, no longer enduring the pre-



eminence of one, they desired to have a commonwealth and set up a constitution. The ruling class soon deteriorated and enriched themselves out of the public treasury; riches became the path to honour, and so oligarchies naturally grew up. These passed into tyrannies, and tyrannies into democracies; for love of gain in the ruling classes was always tending to diminish their number, and so to strengthen the masses, who in the end set upon their masters and established democracies."<sup>2</sup>

**Criticism of Aristotle's Classification.** Such is Aristotle's classification. The cycle of political change given by him is fully corroborated by the history of the Greek City-States in the centuries preceding the Peloponnesian war. (Recent history, too, provides examples of a similar political progression) The last phase of political anarchy to be suppressed by a military autocracy is a common feature of our own times and it reminds us of various *coup d'états*, the most recent being one led by General Naguib in Egypt, Brigadier Kassem in Iraq, General Ayub in Pakistan, Lt.-General Ibrahim Abboud in Sudan and many other such very recent examples.

① In spite of this pragmatic progression, Aristotle's classification has been subjected to severe criticism. It is argued that his classification is not based on any scientific principle as it emphasises quantitative rather than qualitative aspect; his division is mechanical and not spiritual in character. But this criticism does not hold good. Aristotle ignores the various stages in the development of political consciousness of the people, but his test is, indeed, ethical and spiritual, whether the form of government is Monarchy or Aristocracy or Polity. ② Aristotle might have differed in his political philosophy from his teacher, yet his, as it was with Plato, true test of a good government was knowledge, spiritual and ethical. The determining factor of his classification lies in the character of the one, or the few or the many. Burgess has rightly said that Aristotle's classification is organic or spiritual rather than numerical./

③ But Aristotle's classification does not include and explain modern forms of government like Constitutional Monarchy, Unitary, and Federal governments Parliamentary and Presidential types. The City-States of Aristotle, as Seeley says, do not fit in with modern 'country-States'. Perhaps Aristotle could not conceive, at the time when he flourished, the various forms into which a government might develop. ④ Nor do we use Democracy in the same sense in which Aristotle used it. Aristotle's classification into Monarchies, Aristocracies, and Polities is also not satisfactory according to our forms of division. If we accept his classification, are we to class Great Britain as a Monarchy or a Democracy and how is it to be differentiated from the government of the United States? ⑤ Finally, Aristotle definitely distinguished between Aristocracy and democracy (polity). But the attempt to distinguish between the two is futile in our times, for it is not easy to find out where one ends and the other begins.

**Other Classifications.** In spite of these defects Aristotle's classification was accepted as fundamental till quite modern times. The modern writers dropped the ethical or qualitative basis and classified govern-

2. Aristotle, *Politics* II, Chap. XV.

ments on quantitative basis alone. Three-fold classification of governments—Monarchies, Aristocracies, and Democracies—became the generally accepted norm till the end of the World War I, when Democracy merged others, except for subject countries, colonies, dependencies or trust territories and others where dictatorships were established.

Among the modern writers Montesquieu proposed a three-fold division: Republican, Monarchical and Despotic governments. Republican government is that in which the people as a body, or even a part of the people, possess the sovereign power. Under a Monarchical form of government there is rule by one single person, but he governs only by fixed and established laws. In a Despotic government, on the other hand, there is a single person who rules, but without any law and conducts everything according to his will and caprice.) How long a particular form of government can last? Montesquieu's reply is that it depends upon the "persistence in given society of that particular spirit which is characteristic of the form."

Rousseau divided governments into Monarchies, Aristocracies, and Democracies. He subdivided Aristocracies into three forms—natural, elective, and hereditary. He considered elective Aristocracy as the best and hereditary the worst.) Rousseau was the great champion of direct Democracy. (He also admitted the existence of mixed forms of government. (Bluntschli gives us another classification. He accepted Aristotle's classification as fundamental, but added to it one form of his own. His division was: Monarchies, Aristocracies, Democracies and Theocracies.) Theocracy is that form of government where the supreme power is attributed to God, or to a God, or to some other superhuman being, or to an Idea. The men who exercise authority are deputies or viceregents of God or a God. Theocracy, according to Bluntschli, is a normal form of government, but when it becomes perverted it is known as idolocracy. But such a classification seems quite fallacious. The modern Political Scientist separates religion from politics and he does not bring God in his division of forms of government. His task is to locate sovereign power and it rests, for all intents and purposes, either in one person or in a number of persons.

There are other writers who classify States on a historical basis. Von Mohl, a German publicist of the nineteenth century, is prominent out of this school. He distinguishes Patriarchal, Theocratic, Despotic, Classic, Feudal and Constitutional States. He gives other types of government as well and subdivides Classic States into Monarchy, Aristocracy and Democracy. Von Mohl's classification, even on a superficial examination, is forthwith rejected. It is based on no single principle and he does not distinguish between the State and government.

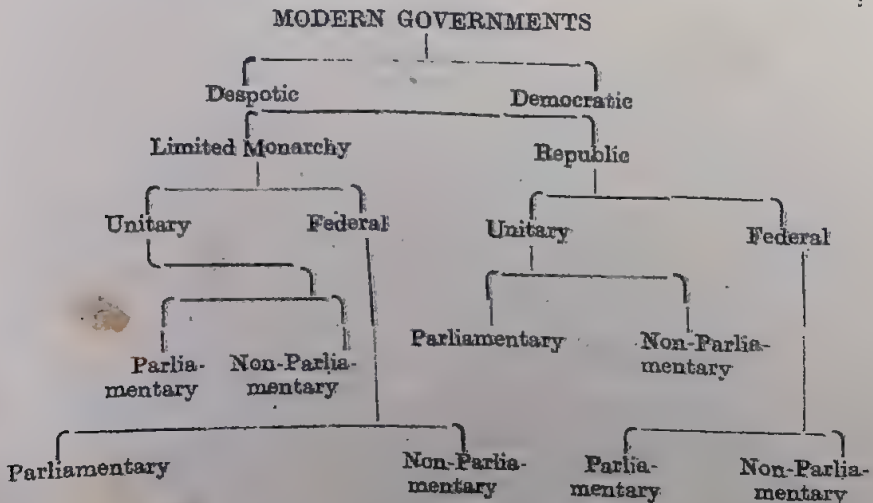
**Marriot's Classification.** Sir J. A. R. Marriot, a Political Scientist of recent times, classifies Governments on a three-fold basis. He accepts Aristotle's classification as fundamental, but regards it as inadequate for modern governments. Marriot's first basis of classification is the distribution of powers of government. The governments are, accordingly, divided into **unitary** and **federal**.) In a Unitary Government there is concentration of powers at the centre and the provincial governments enjoy only delegated powers as they are the creation of the central government.

In a Federal Government there are two sets of government and authority is divided between these two—central and state governments. Both the parts of government enjoy original powers granted to them by the constitution and each is autonomous in its own sphere of jurisdiction.

Marriot's next basis is that of a rigid and a flexible constitution. In the third place, his basis of classification is the relation between the executive and the legislature. When the executive is superior to the legislature, the form of government is **Despotic**. If the executive is co-ordinate in power with the legislature, the type of government is **Presidential**. If the executive is subordinate to the legislature, as in the United Kingdom, the form of government is **Parliamentary** or **Cabinet** or **Responsible**.

**Leacock's classification.** Dr. Stephen Leacock's classification is almost similar to the one given by Marriot. He, however, does not attempt to include in his classification all the historical forms which have appeared in the evolution of the State. Leacock confines himself to actually existing types of government. His fundamental division is between Despotic and Democratic types. In a Despotic government the sovereign power is concentrated in the hands of one single person who rules according to his will. In a Democracy, sovereign power resides in the people or a majority of them. Democratic governments are divided into a Limited Monarchy and a Republic. In a Limited Monarchy the head of government is the king, but his authority is limited. In a Republican government, the executive is elected by the people for a fixed term of office. Each of these types may assume one of the two forms, Unitary or Federal. A Unitary or a Federal government may either be Parliamentary or Non-Parliamentary or Presidential. In a Parliamentary government the real executive is responsible to the legislature. In a Non-Parliamentary or Presidential type the executive is not responsible to the legislature.

Dr. Leacock's classification can best be explained by the following table borrowed from him:—





It is, indeed, extremely difficult to have a proper classification of modern governments. The form of government is the product of numerous factors, historical, geographical, social, economic, psychological. Some of these factors are comparatively permanent and give a peculiar impress to the institutions in their evolution and functioning. Both Britain and France, for example, have in common a Parliamentary system of government. But the government of Britain is in ultimate theory an absolute Monarchy, in form a limited Constitutional Monarchy, and in actual practice a Democratic Republic. Practice outruns theory in Britain. France, on the other hand, is a country with the form of a Republic, the institutions of a Monarchy, and the spirit of an Empire. There is, in general, a tendency for the French citizen to think of politics in intellectual rather than in practical terms, to attach more importance to symbols than to concrete achievements. The result is, as Siegfried says, "French politics are often both unrealistic and passionately ideological."

The United States of America and Canada, the neighbouring countries, are Federations. United States is the classical example of a Federal polity, which brought into existence the union of the hitherto sovereign States for purposes of national unity. The component States enjoy a juridical status and corporate personality and are autonomous, except in a few enumerated subjects which are of common national interest. The fathers of the Canadian Constitution were not wedded to the narrow ideas of a Federation. They adopted federalism as a device for bringing together diverse elements and to solve the administrative and economic difficulties which confronted the country then. The Provinces were, accordingly, given certain enumerated powers leaving the rest, together with some overriding powers, for the Central Government. Lord Haldane would not designate Canada a Federation and Professor Wheare calls it a "quasi-federal constitution". But in actual practice the unitary elements in Canada have either now become obsolete or are being so worked as not to compromise with the federal principle. United States, on the other hand, has a federal constitution as well as a federal government, though the process of centralisation there is now assuming alarming proportions.

The Indian Constitution is Federal in form, but it sets up a highly centralised structure of government. The unitary tendencies found therein nullify to a great extent the broad features of federalism. And the founding Fathers deliberately did it. Dr. Ambedkar, the principal architect of the Constitution, himself claimed in the Constituent Assembly that India was a Federation during times of peace with a Unitary system of government during times of war.

It follows, then, that no two forms can be absolutely identical any more than two human beings, whatever likeness there may be. And, like a human being, no government remains the same. Chance is at work all the time and more so in the atomic age of our times. The needs of man and his environments have become so numerous and complex that no mechanism of government can claim perfection and consequently finality. The atomic age needs revolutionary changes and a dynamic mechanism of government to suit the purposes to be realised. Could

anyone visualise a decade or so before that planning would become a democratic plea for the realization of the well-being of men within the framework of a capitalistic structure of society?

**Need for a new classification.** With the emergence of the Welfare State the distinction based on 'socialism' and those based on 'private enterprise' is wearing pretty thin. This necessitates revision in the traditional methods of classification. Our approach should not be confined merely to outward forms as they give no clue to the real purpose of the State. Paine wrote 150 years ago: "When it shall be said my poor are happy, neither ignorance nor distress is to be found among them; my jails are empty of prisoners, my streets of beggars; the aged are not in want, the taxes are not oppressive,—when those things are said, then may that country boast of its government." The primary purpose of every State is the same and every government is charged by the community with the double task of maintaining what MacIver calls "an established code of living and of adjusting this order to new conditions and emergency needs." It does not matter what the head of the State is called. We shall assign to a particular government its proper place and label by knowing what it actually does in realising the purpose entrusted to its charge; the well-being of the people. Well-being and well-feeding are not synonymous. Well-being means the expansion in human spirit and, as such, it is a question of liberty in all its aspects. On the political front it implies responsiveness and responsibility of the Government. How far the Government is responsive and consequently responsible for its actions depends upon the size of the electorate and the freedom they enjoy in influencing its laws. The Greek statesman Alcibiades remarked to his uncle Pericles that a law adopted by the popular assembly was nothing but an arbitrary act when the majority imposed it on the minority without persuading the latter.

## MONARCHY

**Absolute Monarchy.** Monarchy represents that form of government where the source of all political authority is to be found in a supreme ruler. All the organs and officers of Government are the agents of this ruler for the purpose of carrying out his will. All acts of Government are his acts and derive their validity from his sanction. All laws are his commands, though they may have been formulated by one of his agents. As the bearer of sovereignty, his authority is supreme, unlimited, and self-determined, both as regards the extent to, and the manner in which it shall in fact be exercised. Louis XIV of France expressed this idea in the famous phrase "*L'Etat, c'est moi*," I am the State. This is absolute Monarchy.

The institution of Monarchy is a product of history and it has grown as a part of the evolution of the State. In the early stages of the development of the State Monarchical system was the most beneficial, for it was characterised by singleness of purpose, unity, vigour and strength. The Monarch combined in him the functions of the law-maker, the judge, the executive and the military commander. He was, thus, able to hold together by his own personal force a society which otherwise might have broken up into many elements.

In the beginning, the Monarch was elected and, then, the institution became hereditary and it is now the normal type, wherever it exists. The early Roman kings were elected. The mediaeval kings were both hereditary and elected.' A king may be elected in our own times. Nadir Shah, the father of the present ruler of Afghanistan, Zahir Shah, was an elected king. But it is not a normal feature and all monarchies are now hereditary. A hereditary king enjoys a life-long tenure and the office passes to his heirs according to the law of primogeniture.

Absolute Monarchy has existed both in the East and in the West up to the very recent times. In the East, the leading example of a government of this character was that of Japan. In the eighties of the last century, Japan decided to abolish her old system of government and to establish in its place one corresponding to modern political ideas as represented by existing governments of Europe and America. But even the new Constitution (1889) established a type of absolute monarchy. Article 1 of the Constitution clearly stated that "the Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal." Baron Ito, in his **Commentaries on the Constitution of the Empire of Japan**, explained the meaning of the phrase "reigned over and governed" and said "it is meant that the Emperor on his throne combines in himself the sovereignty of the State and the government of the country and of his subjects." In the West, the two most important examples of governments resting on absolute basis were those of Russia before the Revolution of 1917, and Germany immediately before the adoption of the Weimar Constitution of 1919.

The despotic king always claimed that he got his authority direct from God, that he was God's viceregent on earth, that he ruled by divine right and that he was answerable to none except God. This belief in the divine right of the kings to rule prevailed in all countries. In China the Emperor was described as the "Son of Heaven" and that he ruled by virtue of the mandate that he had received from Heaven. Referring to Europe and Britain, Bryce says, "from the fifth to sixteenth century whoever asked what was the source of legal sovereignty and what the moral claim of the sovereign to obedience of subjects would have been answered that God has appointed certain powers to govern the world and that it would be a sin to resist His ordinance." The king was, accordingly, free from all human limitations. He was accountable to God alone and not to his subjects. Some kings, no doubt, took a high view of their duties and governed well and yet they were subject to no restraints, except the law of God.

**Merits of Absolute Monarchy.** Perhaps, there could have been no other better form of government than absolute Monarchy in disciplining the uncouth and uncivilised people who had emerged out of barbarism. John Stuart Mill has rightly said, "Despotism is a legitimate mode of government for dealing with barbarians, provided the end be their improvement and the means be justified by actually effecting that end." Absolute Monarchy possesses the merits of strength, vigour, energy of action, promptness of decision, unity of counsel, continuity and consist-



ency of policy. Undivided counsel, promptness of decision and a consistent policy are the essential requisites of a good and efficient administration, particularly during periods of national crises and emergencies. Monarchy, therefore, comes as a beneficial antidote to chaos or weak government. History is full of examples when the rule of one has been reimposed as a means of protecting the interests of the people at large from the rapacity of the few. The English supported their strong Tudor kings, "to be their protection against the lawlessness of the armed nobility."

As all the powers of government, executive, legislative, judicial and military, are concentrated in the Monarch, he is able to keep a greater uniformity of purpose in the State. A sagacious king having sturdy commonsense can easily secure the best advice and acts upon it with confidence. His policy is stable and consistent than the shifting policy of the Assembly in a democratic government. An Assembly is usually guided by sentiments and is swayed with the arguments of the politicians. Moreover, a Monarch generally takes a very high view of his duties. He is free to select his officials according to his own pleasure and make them work according to his directions. As the officials can be held to strict accountability, they run the administration to the best of their ability and capacity. The absolute Monarchies of the seventeenth and eighteenth centuries, says Bryce, "saw many reforms in European countries, which no force less than that of a strong monarchy would have carried through."

**Defects of Absolute Monarchy.** But no man is fit enough to exercise absolute power. A despot crushes his subjects to the earth and leaves them nothing they can call their own. Even a good despot teaches his subjects to mind their own private interests and to leave everything else to the government. Absolute government is a government by one single person and he administers according to his own good sense of what can be good and right for his subjects. And history tells us that the good of the subjects has really meant the interests of the ruler himself. He has never cherished the interests of the subjects. If he does, his despotism disappears. Moreover, a good king, under a system of hereditary monarchy, is a sheer chance or accident. There is no guarantee that an able, capable and benevolent ruler must always succeed to the throne. History tells us that imbeciles and fools have been the rules whereas the statesmen and sage rulers have been the exceptions. "A hereditary ruler," says Leacock, "seems on the face of things as absurd as the hereditary mathematician or hereditary poet laureate."

Even if it be admitted that absolute Monarchy is a good form of government, we, who are brought up in the twentieth century, do not believe in good government unless it is self-government, for good government is no substitute for self-government. "No government which does not rest upon the affections of the people, which does not stimulate among them an interest in public affairs and create an active, intelligent and alert citizenship, can be called ideal, and, certainly, no government from which the participation of the people in some form is excluded will ever be able to produce such a body of citizens." A despot dare not

allow liberty and rights to his subjects. He does not inspire in his people a vigorous political vitality, patriotic loyalty and social solidarity. If he does, he does not remain a despot. Power is always intoxicating and a despot will like to see that he remains the fountain of all authority and power. To infuse the spirit of awakening among the people and to permit them enjoyment of liberty and rights mean the destruction of his authority and most probably his own annihilation.

**Limited Monarchy.** Limited Monarchy is that type of government in which the authority of the Monarch is limited either by the prescriptions of a written constitution or by certain fundamental conventions, as in Britain. Sometimes the constitution has been promulgated by the ruler himself. Sometimes it has been forced upon him by a successful revolution. But whatever be the cause, limited Monarchy is a constitutional government, and it is, in principle, like the Republican form of government. The only difference between the two is that under a system of limited Monarchy the chief executive Head of the State is a hereditary king whereas in a Republic the chief executive, usually called President, is elected for a number of years and after the expiry of his term of office, if not re-elected, he joins the ranks of the ordinary citizens of the State. But both the constitutional King, under limited Monarchy, and the President of a Republic exercise authority as ordained by the constitution. They cannot go beyond it. In a limited Monarchy the authority of the King is nominal. The real functionaries are the ministers who are elected members of the legislature and belong to the majority party. They remain in office only as long as they retain the confidence of the legislature. They cannot be dismissed by the king at his pleasure. Nor can they be chosen at random. Britain is a typical example of a constitutional Monarchy where the King or the Queen reigns but does not rule.

**Uses of Limited Monarchy.** The very fact that the authority of the Monarch is limited goes to show that in essence it is a democratic form of Government. The King in Britain, as Bagehot remarks, has the right to be consulted, the right to encourage, and the right to warn. He does not exercise any real authority. The actual government is carried on by ministers who represent the majority party in the legislature. The legislature renews its mandate after every four or five years when General Elections are held. Limited Monarchy, therefore, gives the people real opportunity to actively participate in public affairs and elect administrators who rule the country according to their behest. It is the people who, in the last resort, are the ultimate sovereign.

The chief merit of a Limited Monarchy is the hereditary nature of the ruler. By virtue of a long and uninterrupted tenure of office the king gains mature administrative experience to guide his ministers who are generally amateurs in the art of administration. He exercises, what Lowell calls, the "unifying, dignifying and stabilising influence". Moreover, the Monarch belongs to no party whereas his ministers belong to one. The king, as such, is an umpire in the midst of rival parties, whose main concern is to see that the game of politics is played according to rules.

The days of absolute Monarchy are over now. Even King Ibn



Saud, who was the solitary example of an absolute Monarch, was ultimately replaced by Prince Feisal as a result of the decision taken by the Council of Ministers and the Consultative Assembly. The powers of kings, in all countries where Monarchy persists, have been limited either by the prescriptions of a written Constitution or by fundamental Conventions which form the basis of the Constitution. In Afghanistan and Iran, too, the Kings have become the national symbols and the powers hitherto exercised by them are now vested in their Councils of Ministers. This is the only way now to maintain the hereditary principle and royal dignity. A Limited Monarchy, according to Woodrow Wilson, "is one whose powers have been adapted to the interests of the people and to the maintenance of individual liberty. . . . Roughly speaking constitutional government may be said to have had its rise at Runnymede when the barons of England exacted the Magna Carta from John". From a King arose, by slow and steady progress, the institution of Kingship and the Monarch now reigns; he or she does not rule. To put it in the legal form, the King or Queen can do no wrong.

### ARISTOCRACY

**Meaning of Aristocracy.** Originally, Aristocracy meant that form of Government which was conducted by the best men of the community and was prompted by the most virtuous principles. Such a form of Government comes down to us from Aristotle. *Aristos*, in Greek, means the best and *Kratos* means power. Aristocracy, therefore, according to Greek philosophers, was a form of government *par excellence*. Its principle was virtue: the moral and intellectual superiority of the ruling class and the virtuous qualities which they disseminated into those over whom they ruled. Aristocracy has, now, come to signify that form of Government in which the political power rests in the hands of a small section of the community. But this is not the true test of Aristocracy. It is really Oligarchy, sometimes with implications of the corrupt few. The character of Aristocracy depends on the method of selection of the people who wield power, and the aims they keep in view and not the smallness of the number.

The methods of selection are various and have been devised in accordance with certain leading ideas which have pervaded and still pervade society. First, there is the idea of the importance of birth. In primitive society, families most directly descending from a common ancestor constituted a class by itself in which outsiders were not admitted, except perhaps by adoption. In modern society we do not speak of a common ancestor, but we still defer to the notion that some families are better than others and consequently they are best fitted to rule. In the second place, selection may be by merit, that is, persons of superior intellect and ability are chosen to govern others. This is Aristocracy of talent. Selection by favour is another method. When a king confers high rank on those who serve him the best, the method of selection is by favour. Again, there may be an Aristocracy of wealth, when the criterion of selection is only the possession of riches. The poor, whatever be their intellect or merit, have no chance to assume public offices and participate in public affairs. It means, some are born to rule, if they happen to



inherit wealth or amass it themselves, whereas others to be ruled if accident of birth or circumstances do not make them so fortunate.

Professor Jellinek has laid emphasis on the social aspect of aristocracy. He maintains that there is always some social class which wields the dominant power in the State. It may be a priestly class or military class or landed aristocracy. But whatever be the type, power will belong to that social class which is more powerful than the rest, and this class enjoys certain special privileges which are denied to other classes. Jellinek, accordingly, concludes that it is an error to define Aristocracy merely as a Government by the few.

**Kinds of Aristocracy.** Aristocracy for Aristotle was a normal form of government. Its perverted form was oligarchy, government for the rich by the rich. Rousseau divided aristocracies into natural, elective and hereditary. The general basis of classification had been: of wealth, of birth, of talent and intellect and of culture and education. Some writers have, during recent times, used the term "aristo-democracy" for aristocracy. Aristo-democracy means that only best types of men wield power. In a sense, a democratic Government is more or less aristocratic in that a considerable proportion of population takes no part in government and the greater share of the governing power is concentrated in the hands of a comparatively small number (the Theory of Elite). Public opinion is influenced, moulded and shaped by the leadership of the few. The majority party forms the government and its leaders man the administration. The majority party together with the minority in the legislature enacts laws. The masses simply elect their representatives and leave the rest to the actual administrators till they are called upon to elect the rulers again. The line between Aristocracy and Democracy is, therefore, difficult to draw. But it must be remembered that Aristocracy places no confidence in the ability of the masses. It is a government of the select few; may it be the "aristocracy of breeding", or "aristocracy of intellect", or "aristocracy of talent." Democracy has faith in the ability of man and its principle is equality. It accepts man as a man and provides equal opportunity to all to rise to the highest public office in the State. Thus, all persons who are fit to perform the duties of a citizen can have a share in the direction of the affairs of the State.

**Merits of Aristocracy.** One of the great merits of Aristocracy is that it emphasises quality and not quantity. It assumes that some are better fitted to govern than others. They govern as they are the best and the criterion of their being best is the moral and intellectual superiority which they possess over others. "It is the everlasting privilege," says Carlyle, "of the foolish to be governed by the wise." Aristocracy, thus, gives to the community a ruling class who can be trusted to administer public affairs with complete integrity and honour, because they possess a great position independent of politics. It can also claim superiority over other forms of Government in respect of stability and efficiency, and, thus, can maintain a consistent and vigorous policy both in domestic and foreign relations. John Stuart Mill says that "the governments which have been remarkable in history for sustained ability and vigour in the conduct of affairs have generally been aristocracies." It is

further argued that Aristocracy would refrain from unwise and immoderate use of power. Its supporters would even defend hereditary aristocracy, for it provides a body of persons who possess a certain hereditary familiarity with public affairs. Political training runs in their blood and they take naturally to the business of government more efficiently and diligently. They represent standard of perfection, derived from heredity and environment, and set a model for others to imitate as well as reverse.

Aristocracy, it is claimed, is pre-eminently conservative. Since administration rests in the hands of the wise, talented and experienced administrators, who have inherited high traditions of public service, they would naturally avoid rash and radical political experiments. Moreover, stability is one of the foremost requirements of a good government and stability demands of "conservative innovation". Violent changes involving suppression of institutions, which become venerable with age, agitate popular feeling and, as such, endanger the stability of government. "It is, therefore, of the greatest importance in social and political progress that the principle of progress of liberalism should always be joined to the principle of stability or conservatism."<sup>6</sup> Aristocracy serves the desired purpose. It allows only slow change and there is no complete break with the past. Aristocracy is, accordingly, a reservoir which conserves experience and transmits wisdom to the present. Conservativeness and continuity are the two essential conditions of stability and as Montesquieu said "moderation" is the chief principle of Aristocracy.

In fact, Cabinet Government is in essence Aristocracy. Those who constitute the Ministry are party leaders. According to Laski, the essential contribution of the Ministers to the Cabinet is "their commonsense, their ability to put before their colleagues that judgment about decisions which public opinion, and especially party opinion, will make after they have been published."<sup>7</sup> This is Aristocracy tinged with responsibility. Modern Governments have preserved the element of Aristocracy in the composition of the upper chambers of Legislatures. For instance, the British House of Lords consists of primarily hereditary peers. In countries, where the Second Chambers are elected, the elections are usually so arranged as to make them representative of the best minds in the nation. The Council of States, the Second Chamber in India, consists of two hundred and fifty members of whom twelve members are nominated by the President. The members nominated by the President consist of persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.<sup>8</sup> This system of representation is aristocratic in the best sense.

**Weakness of Aristocracy.** But the evil inherent in all kinds of Aristocracies is that they form a separate interest which is almost certain to come into conflict with the interests of the community. No wise and just principle has so far been devised for the selection of the ruling class, and no safeguard has been suggested to ensure that the few will rule

6. Garner, J. W., *Political Science and Government*, p. 231.

7. *Parliamentary Government in England*, p. 286.

8. Article 80, clauses (1), (2) and (3).

in the interests of all and not for their selfish advantage. The privileged persons who are destined to rule form a class of vested interests and they look on their privileges as a matter of right which ought to be transmitted unimpaired to their successors. Even Aristocracy of the best soon degenerates into a class rule. Flushed with power and authority, they become arrogant and proud, and display towards the classes excluded from a share in the Government, a harshness and cruelty "which have been the more intolerable because accompanied by contempt."

The rule of hereditary succession, "aristocracy of breeding", works evil as well as good. When it has prevailed for a long time, a considerable number of hereditary dignities descend to persons quite unfit to exercise power or to make a good use of social influence. Moreover, division of people in classes provokes envy and opposition. The rulers become narrow, selfish and domineering resulting into widespread disaffection and eventually rebellion. It is not rational to maintain and to put faith in it that some are born to rule and others to be ruled. Such a Government is irresponsible and irresponsible, for it excludes the masses from finding interest in Government. They become only recipients of orders. Aristocracy, therefore, is exclusive. It does not offer the people political training or political consciousness, which is so essential for citizenship. It is a Government for passive dumb-driven creatures and not for politically awakened and active citizens. Similarly, property, like birth, should not be the criterion for elevating a person to rule. Governing power cannot be wisely restricted to persons who either by accident of birth are born in rich families or to whom some freak of fortune has brought riches. Such fortunate persons when in power devise all means, sane or insane, to perpetuate their own interests reducing the masses to a pitiable plight.

A great defect of aristocracy, says Bluntschli, is its excessive rigidity. A Government which has reverence for long-established customs and traditions cannot have a dynamic outlook. A good Government must keep pace with the economic and social requirements of society. Aristocracy will resist all such changes in order to preserve its power. It is not a dynamic mechanism of Government for the fulfilment of the needs of a dynamic man. It cannot, therefore, serve the purpose of our times. It stands for backwardness. Finally, Aristocracy stands for pomp and splendour. All this grandeur and dignity entail huge expenditure and extravagance at the very high cost of public good.

## DEMOCRACY

**Meaning of Democracy.** The term democracy is derived from the Greek words **demos** and **kratos**, the former meaning the people and the latter power. Democracy, thus, means power of the people. It is now regarded as a form of government in which the people rule themselves either directly or indirectly through their representatives. Definitions of democracy, as a form of government, are various. But like many other definitions in Political Science, they differ in their content and application. The Greeks meant by it the Government by many and Aristotle considered it as a perverted form of government. Modern writers do not regard it as a perverted form of government. What Polity was for Aristotle.



democracy is for us. Nor do they employ the mere numerical consideration to designate it so. Their emphasis is that in democracy all persons who are fit to perform the duties of citizens should have a share in the direction of the State and their will should ultimately prevail. Professor Seeley means by it "a government in which every one has a share."<sup>9</sup> Dicey defines democracy as that form of government in which the governing body is a comparatively large fraction of the entire nation. Bryce accepts the definition of Herodotus and says that democracy denotes that form of government in which the ruling power of the State is largely vested in the members of the community as a whole. He adds, "This means in communities which act by voting, that rule belongs to the majority, as no other method has been found for determining peaceably and legally what is to be declared the will of the community which is not unanimous."<sup>10</sup>

But a mere consent of the people is not sufficient enough to make a government democratic. The people ought to be, to use the words of Plato, their own "watch-dogs". The consent of the people must be real, active and effective in order to make it a genuine democracy. Eternal vigilance is the very life of democracy, if democracy can really claim, in the words of President Abraham Lincoln, to be a government of the people, by the people, and for the people. Government is, of course, always of the people, but it need not be government by the people. Monarchies and Aristocracies are governments of the people and not by the people. A government by the people means that people either directly or through their representatives govern themselves, and their will remains supreme on all questions of social direction and policy of the government.

mp. | It is not correct to say, however, that democracy is a government by the representatives of all people. "The people" has been a varying term, as Bryce points out, and it has come to mean something vastly different from what it meant to Aristotle, or even to Lincoln.<sup>11</sup> It now means the majority of the people. Democracy, according to Bryce, is a form of government "in which the will of the majority of the qualified citizens rules, taking the qualified citizens to constitute the great bulk of the inhabitants..."<sup>12</sup> And it is obvious that democracy allows every qualified citizen to express an opinion on affairs of the State. But it cannot secure that every man's opinion shall influence the actions of the State. All citizens cannot be made to agree on all questions of importance. Moreover, all citizens cannot have a voice in determining the policy of the government. Even the most ardent democrat will not vote for lunatics, criminals or infants. Participation is always limited by age; frequently by sex, as it is only recently that women have been given the franchise in many leading countries, and in many they have not yet received it. In many States the suffrage is restricted to those who possess a certain amount of property, and in most cases a certain minimum of literacy and education is required. Therefore democracy does not mean participation by all the people. Whenever, we speak of government by

9. *Introduction to Political Science*, p. 324.

10. *Modern Democracies*, Vol. I, p. 20.

11. *Ibid.*, p. xviii.

12. *Ibid.*, p. 26.

the people or the will of the people, we mean the will of the majority for the time being.

There are two reasons for the will of the majority to prevail. First, they are on the whole more likely to be right than the minority. Secondly, a majority in most cases is physically stronger than a minority. Unless the majority grossly abuses its power, it is politic for the minority to submit to its will lest the majority may resort to coercion. But it must be admitted that "the coercion of dissentient minority constitutes a special difficulty for a government founded on the principle of consent".<sup>13</sup> Democracy can be successful only when minorities feel that they are not subjected to oppression by the majority and that their case has been properly heard. When we admit that under a democratic government there is political equality, we mean thereby that opportunity is provided to all citizens, "to pass judgment freely and frequently on the work of the political engineers whose decisions affect their lives."<sup>14</sup> It is then only that a government can be by the people. A democratic government cannot please everybody any more than a Monarchical or an Aristocratic government. But the former concedes to every citizen the rights of speech, publication and association. "These rights are integral to democracy because they make possible free discussion and the continuous participation of the people in the government." A government by the people must, accordingly, mean a government by discussion and criticism—discussion of competing ideas, "leading to a compromise in which all the ideas are reconciled and which can be accepted by all because it bears the imprint of all."<sup>15</sup>

Rights of minority, as those of majority, are, thus, embedded in the basic democratic elements of freedom, equality, and rationality. Expressed in other words, democracy is a system of government in which a majority, after permitting complete participation of a minority, and with respect for its opinions uses the force of the State to effectuate its own views. But it is rare for a majority to impose its will harshly on minorities. Reasonable members of a majority will insist on justice and fairplay as reasonable members of a minority will insist on submission and obedience, for today's minority may become tomorrow's majority. This makes democracy a government of restraints in which reciprocity prevails, that is, restraints on a majority as well as on a minority and both respecting restraints relating to each other.

The meaning of government for the people can best be explained in the words of Mazzini: "the progress of all through all under the leading of the best and wisest." The test of government is the welfare of the people, and that form of government is to be preferred which gives to human tendencies the fullest scope of development. The primary functions of a democratic government are similar to those of any other form of government. But, in addition to this, "democracy stimulates to self-education, for participation in governmental activities, opens wider hori-

13. Sidgwick, *The Elements of Politics*, p. 611.

14. Appadorai, *The Substance of Politics*, p. 141.

15. Barker, *Reflections on Government*, p. 36.

Evolution. zons for the individual and leads to broadened interests." <sup>16</sup> The lessons of democracy are liberty, equality, fraternity and rationality. Its principle is that all persons who are fit to perform the duties of citizens should have a share in the direction of the State so that each man may have an identical opportunity to grow and expand to the best of his capacity, and there is no man or group of men who will exploit the weakness of others. Democracy does not differentiate between man and man. It raises the common man high on the pedestal of social and political glory and this is the meaning of a government for the people.

For a democratic government there must be a democratic society. A democratic government aims at justice and happiness. Justice, because no man or class or group will be strong enough to wrong others; happiness because each man judging best what is for his good, will have every chance of pursuing it. "The principles of liberty and equality are justified by the results they yield." Here liberty and equality have a reference to the well-known dictum of Kant: "So act as to treat humanity whether in your person or in that of another, in every case as an end, and never merely as a means." This is the requisite of a democratic society, for it instils in human mind the democratic ideal. It is the worth and dignity of the human being as an individual which a democratic society recognises and it is, again, the worth and dignity of man which a democratic government maintains and guarantees. Both aim at what Bentham has reduced into a beautiful formula: Every one to count for one and no one for more than one. A democratic government, therefore, can exist and thrive when the society is democratic.

Dunning has rightly remarked that our failure to understand democracy in its wider meaning, as a form of society, is the main reason for its being subjected to severe criticism. "Democracy," writes Sir Stafford Cripps, "is a system of government in which every adult citizen is equally free to express his views and desires upon all subjects in whatever way he wishes, and to influence the majority of his fellow-citizens to decide according to those views, and to influence those desires." It means that uniformity of belief or action is neither necessary nor desirable in democracy. Truth only comes by the clash of opinion with opinion and every citizen has something of value to contribute and he must not be hindered in bringing it forward. Democracy is, thus, rooted in equality and can be found in a democratic society in which all enjoy equal rights and privileges without any barriers of class distinctions.

"A democratic society," says Wolff, "is a society of free, equal, active and intelligent citizens, each man choosing his own way of life for himself and willing that others should choose theirs." The brotherhood of man is the basis of democratic society and all its members stand equal in the common fraternity. Birth, wealth, caste, or creed do not determine the status of man. A society riddled with social and economic inequalities cannot be called a democratic society. Social and economic inequalities bring inequalities of treatment and right. Where a common man is not as good a factor of society as another, true citizenship cannot be secured and a democratic government cannot succeed in such an undemocratic society.



The Communists give a new meaning to democracy. They deny the need of a democratic government, but emphasise the necessity of a democratic State and a democratic State to them is only a socialist State with the dictatorship of the proletariat. They ridicule the western system of democracy with its economic and social inequalities and regard the toleration of minorities, which is the life-blood of democracy, as a show of hypocrisy, because for them the existence of minorities does not help the abolition of privileges. It is only in a socialist society which is classless, they assert, that there are no exploiters and the exploited. All the people are toilers and, as such, there exists no antagonism between them. But the Communists are really not democrats and their's is not a democratic State. They permit the existence of only one party, the Communist, and the difference of opinion with regard to the socialist structure of society is not allowed to prevail. All must be Communists imbued with the socialist spirit. The dictatorship of the proletariat, which is established after the revolution, is a temporary phase in the evolution of socialism. When socialism is fully established, the State 'withers away' and gives place to a Communist society. This may be democracy, but not as we understand it. According to our conception democracy is not hostile to the State. It is the best form of government and a permanent feature of the State in which equal opportunity is provided to every man, irrespective of the opinion he holds, to contribute his judgment to the determination of public policy. As a theory of society, democracy stands for that social order which recognises the inherent worth of every human being and has never-ending faith in the common man. But such a recognition can only be ensured by the State and guaranteed by its laws.

Democracy is, therefore, difficult to define and Freeman correctly says that "it is commonly very hard to make out what modern writers mean by democracy." It is not a mere form of government. Dewey has aptly said that "to say that democracy is only a form of government is like saying that home is a more or less geometrical arrangement of bricks and mortar, or that church is a building with pews, pulpit and spire." Democracy, according to Barker, is a mode of spirit, an attitude of mind of those who profess it, and those who profess it can only practise it. There is synchronisation of thoughts and actions and this is the essence of democracy.

## DIRECT AND REPRESENTATIVE DEMOCRACY

As a form of government, there are two types of democracy—(1) pure or direct, and (2) representative or indirect.

**Direct Democracy.** When the people themselves directly express their will on public affairs, the type of government is called pure or direct democracy. The people formulate and express their will in a mass meeting and they assemble for this purpose as often as required. In the small City-States of ancient Greece and Rome all adult male citizens were expected to meet together in the Assembly—the Ecclesia of Athens, the Comitia of Rome. Pure democracy has not been confined to the ancient world. Its surviving relics are found today in the Swiss *landsgemeinde* or a popular legislature. There were twenty-six *landsgemeinden*

in the middle of the eighteenth century; today, there are only five, and one of them has been confined to elective functions. On a Sunday in April or May the adult male citizens in the Canton assemble to consider in full open-air meetings the governmental affairs of the Canton. At such meetings new laws are agreed upon and old laws changed, taxes levied, budgets adopted and officials chosen.

But pure or direct democracy can exist and function only in small States with limited homogeneous population where people can conveniently meet and deliberate together. In large and complex societies, when the number of the people is too numerous and the area of the State is too extensive, direct democracy is impracticable. Even the Swiss *landsgemeinde* is cantonal and nowhere is it associated with national government. This institution has been commended by some writers with great enthusiasm, but a close acquaintance of its actual working produces a very different effect. "It would be naive," says Professor Rappard, a Swiss scholar, "to believe that even a small community of a few thousand well-trained citizens could, under the complex conditions of the twentieth century, effectively govern itself by means of such an ephemeral legislative assembly. One might as well expect a football crowd, assembled for a few hours in a stadium, to make itself responsible for the establishment of an academic curriculum or for the drafting of a measure of social insurance."

Direct democracy now assumes the form of the referendum and the popular initiative, and they have long been familiar in Switzerland and the United States. After the First World War they made an appearance in Germany, Latvia, Estonia, Ireland and even in Soviet Russia. They were deleted from the Irish Constitution in 1928, and were lying dormant for thirteen years in Germany when Hitler struck down the Weimer Constitution. In Russia, the Presidium may submit the proposed legislation for the popular vote and hold referendum, but it has never been held so far. In the United States direct legislation is obtainable only in eleven States, most of them in the west. Popular, or direct legislation, as Sait remarks, "is little more than a fad outside of Switzerland, where unique conditions prevail."<sup>17</sup> In Switzerland direct legislation has a natural growth, or, as Bryce says, it is "a clay of the soil." There are institutions which, like plants, flourish only on their hillside and under their own sunshine."<sup>18</sup>

**Indirect or Representative Democracy.** The prevailing system of democracy is indirect or representative. The will of the State is formulated and expressed not directly by the people themselves, but by their representatives to whom they delegate the power of discussion and decision making. They are referred to as representatives and this type of government as representative democracy. The representatives are periodically elected by the people. John Stuart Mill defines indirect or representative democracy as one in which "the whole people or some numerous portion of them, exercise the governing power through deputies periodically elected by themselves."

17. *Political Institutions: A Preface*, p. 432.

18. *Modern Democracies*, Vol. I, pp. 453-454.

In a representative democracy the ultimate source of authority remains with the people. But it draws a distinction between the **possession** of sovereignty which resides in the electorate and its **exercise**, which is by the elected representatives. Hobhouse says, "Democracy means or may mean, two things which, though allied in idea, are not necessarily found together in practice, viz., (i) direct participation of the mass of ordinary citizens in the public life of the community, (ii) ultimate popular sovereignty." The people elect the representatives for a number of years and after the expiry of their term, they report back to their masters, the electors. The electors judge them by their deeds and determine whether or not they should repose their trust in them for the next term. If they feel to discontinue with them, they would do so by electing new representatives. Representative democracy guarantees, in other terms, a general harmony of purpose between government and governed by reconciling effective authority and political freedom.

After the World War I a good deal of dissatisfaction was expressed against the working of representative democracy, and devices of popular control, the **referendum**, the **initiative** and **recall**, were introduced by some of the States. These devices aimed at transferring from the representatives to the people themselves the right to have the final verdict over legislative and administrative matters and to recall those representatives back from office who did not perform their duties diligently, honestly, and in accordance with the wishes of the people. But the dominant verdict has proved hostile to these direct devices of popular control and the representative institutions continue to be instruments of democracy.

### REQUISITES OF DEMOCRACY

Democracy in its broader sense means faith in the common man. A genuine democracy, therefore, is an active, growing, progressive force responsive to the will of the people and animated by ideals of mutual service and public welfare. It involves the presence of a democratic idea among the people, and a democratic idea, according to Ivor Brown,<sup>19</sup> means:—

1. An "action of will". The people should not only imbibe the will to have democracy, but the power to retain it as well. They should be fully conscious of their political rights and duties as vigilance is the price of democracy. The citizens should not be silent spectators, simply watching the game of politics. Nor does it mean mere submission or acquiescence on their part. Democracy demands from the common man rational conduct and active participation in the affairs of government. A democratic government, as said earlier, is a government by criticism. The people should have the courage to protest against and criticize the injustice and tyranny of the government. "To be articulate is its very life; to be dumb its demise." It is only the will of the people to action which can save them from the tyranny of the rulers. The rulers become masters when the citizens are passive. They become their servants when citizens assert and uphold their right that they are the masters. The



successful working of democracy, accordingly, depends upon the intelligence, interest, public spirit and civic sense of its citizens, the sense of 'public spirit' and 'social consciousness', in brief.

2. Democracy involves fellowship, that is, a feeling of fraternity or what Giddings calls, 'consciousness of kind'. Fellow-feeling aims at realization of a common end—the welfare of humanity. Fellowship, therefore, appeals to our common humanity. Democracy does not recognise class distinctions. Fellowship knows no limits created by religion, caste, birth or wealth. It is only in a society of equals that harmony can be secured. By equality we mean, of course, equality of opportunity—fair and open field for all.<sup>20</sup> This kind of equality ensures social justice which is the very life-breath of democracy. When there exist huge inequalities of wealth, social justice cannot be obtained. A wide gulf between the rich and the poor makes it impossible for the latter to live and exercise their political rights independently and freely. The rich become a class of vested interests and equality in all its meanings disappears. Where there is no equality there can be neither liberty, nor fraternity nor rationality. Democracy is the product of liberty, equality and fraternity and all these three make for rationality.

3. Democracy demands a spirit of tolerance. This is necessary as democracy involves the rule of the majority and the submission of the minority or minorities to the decisions of the majority. The majority should not be prompted by sectional interests and thereby ruthlessly disregard the interests of the minorities. Nor should the minorities always suspect the *bona fides* of the majority and be at perpetual political animosity with the latter. There should prevail a sense of give-and-take; the habit of tolerance and compromise among the citizens. The more there are cleavages in society and party squabbles, the more difficult it is to work democracy. The differences in majority and minority opinion prove beneficial only when they are directed towards the common good, above partisan and narrow considerations. Each party should have a full opportunity to express and propagate its opinion, but once the decision has been taken all should scrupulously adhere to it. "This is true resignation. This is true service and this is all that is demanded by a common fellowship in democracy."<sup>21</sup>

4. There should be adequate provision of opportunities for the individual to develop his personality. This can be realised when everyone has free access to knowledge, security against unemployment, a minimum wage, fair conditions of work and leisure, provision against sickness and old age. Democracy here invades the realm of industry. It has now become a common demand that economic democracy must precede political democracy. A society where wealth is most unevenly distributed and one class of people is out to exploit the rest, democracy cannot succeed. A democratic society is a partnership among equals. A democratic ideal, therefore, cannot be realised until industry is entirely democratized and inequalities in the distribution of national wealth are reduced to the minimum. This may mean to some socialism, but democracy, too,

20. See *Ante*.

21. Ilyas Ahmad, *op. cit.*, p. 153.

aims at social justice. Justice, as Barker says, is a joining or fitting together not only of persons, but also of principles. "It joins and knits together the claims of the principle of liberty with those of the principles of equality, and both with those of the principles of fraternity or co-operation. It adjusts them to one another in a right order of **their relations.**"

5. Democracy is participation. It means doing things in common with others, and taking your share of the responsibilities involved. "The democratic problems," says Lindsay, "is the control of the organisation of power by the common man." The citizens of a democratic State must be thinking human beings possessing an independent opinion and intelligent interest in public affairs. The success of democracy depends upon the ability, character, and power of discrimination a common man possesses. Democracy becomes a show affair if citizens exhibit a sheep-like behaviour—a crowd mind—in public affairs.

The active and intelligent participation of citizens in public affairs can be assured if all of them are adequately educated. The government must, therefore, provide a system of free and compulsory education for all. Education produces thinking human beings who know, according to Rousseau, that they are both sovereign and subjects and they must, accordingly, fulfil their dual obligations. "A citizen of democracy is not merely to obey; he has also to see if his obedience is rational." Vigilance, wisdom, intellect, commonsense and honesty are the virtues which should be possessed by the citizens of a democratic State and all these qualities flow from the gift of education. President Lincoln said: "You can fool part of the people all the time, and all the people part of the time, you cannot fool all the people all the time." If citizens are educated and they have the courage to be critical of the government this befooling business becomes infinitely difficult. Those who follow Bentham's maxim: "While I will obey punctually, I will censure freely" are true citizens of a democratic State. They possess the powers of discrimination to obey and to criticize. They do not belong to an uncritical herd. This means that there should be a free and fearless press which serves as a popular forum of educating and expressing public opinion. Press should really be a jealous guardian of the rights and liberties of the people if democracy is to serve its purpose.

### APPRAISAL OF DEMOCRACY

**Defects of Democracy.** But the assumptions of democracy, it is pointed out, are too idealistic and difficult to be realised in practical life. Democracy demands from the people a high degree of civic capacity which involves intelligence, self-control and devotion to a common cause, capacity to subordinate to it private interests and desires. It relies on the spirit of give-and-take. It also demands time to share in common activities, to study the issues involved. The common man, the critics of democracy maintain, is indolent in politics. He is neither politically intelligent nor sufficiently educated. He does not possess the capacity to understand complex political problems and is incapable of intelligent action

"Democracy is suited," observes Dr. Beni Prasad, "to a state of society in which the people want to exercise power, are capable of sinking minor differences and co-operating for the general good and have acquired knowledge and judgment enough to elect suitable representatives and to judge as to the propriety of general lines of policy."<sup>23</sup> But an average citizen has not the time, inclination and ability to inform himself on the affairs of the State. The apathy of the voters in most of the democratic countries is proverbial. A voter has to be cajoled and dragged out from his place of work in order to cast his vote. The obvious result is that power passes into the hands of a professional politician, a demagogue, who is ever ready to exploit the masses. Godkin explained democracy as "delegating sovereignty to the demagogue, the grafter and the boss." The ultimate sovereign for the most part has neither the will nor the power to find the best men to lead them.

It is further maintained that democracy is inefficient as a form of government. Democracy, it is urged, is based on the assumption that all men are equal and that one man is as good as another, whatever his real worth. He votes and is eligible for office on a level with them all. But, in the opinion of the critics of democracy, it is an irrational and impracticable dogma. They assert that men are manifestly not equal. Physically and mentally they differ widely from one another. Votes are, then, counted and not weighed. Counting of votes determines a majority and the decisions will have to be those of the majority no matter what the margin may be and howsoever superior wisdom and better judgment the minority may claim. Faguet considers democracy as a hopeless rule of ignorance. He makes democracy synonymous with incompetence, as it is a government by amateurs, or as another theorist has put "government by fools." Lecky characterised it as "the government of the poorest, the most ignorant, the most incapable, who are necessarily the most numerous." The representatives assume responsibility of governing the State not because they are able and possess specialized knowledge in administration, but only as they command a majority. "A youth must pass," says Sir Sydney Low, "an examination in Arithmetic before he can hold a second class clerkship in the Treasury but a Chancellor of the Exchequer may be a middle-aged man of the world who has forgotten what little he ever learnt about figures at Eton or Oxford and is innocently anxious to know the meaning of those little dots." The inefficiency of a democratic government is essentially reflected in its policies, especially relating to defence and foreign policy, which are weak and vacillating. A government which depends for its existence upon the uncertain passions of unthinking people (as happened in many States of India after the Fourth General Elections in 1967) and is never sure of its life cannot afford to undertake a sound and long-term policy. Nor can it ensure efficiency as it lives and thrives on nepotism. Offices are distributed by corrupting the representatives, who coquette with the electors to ensure their berth.

Nazism and Fascism were the two serious critics of democracy before World War II. Those associated with these doctrines characterised

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23. Beni Prasad, *A.B.C. of Civics*, p. 95.



democracy as incompetent and inefficient in dealing with serious economic problems. Hitler described it as "stupid, corrupt and slow-moving." It has also been maintained that a democratic government is not suited to the complexities which a Welfare State involves. It cannot cope with the gigantic tasks and new responsibilities confronting the modern State. "When a government does a few things, mistakes hardly matter, but when it does many things, failures are always serious and may be calamitous." It is pointed out that democracy might have proved its usefulness in a simple age, when political units were small or when *laissez faire* prevailed and the services provided by the government were few, but it is incompetent to solve the modern complex problems and confront situations which require immediate decision and concerted action. The very principle of compromise which stimulates a democratic system of government further militates against efficiency, consistency and 'good' government.

Party system is indispensable for democracy. But the manner in which party system actually works in modern democracies deprives countries of the services of some of their best citizens. Political parties encourage hollowness and insecurity, create cleavages in the life of the nation, debase normal standards and distribute the "spoils".<sup>24</sup> Election propaganda misguides and miseducates people. Moral considerations are subordinated in order to secure the largest number of votes. People vote for the party and not for the candidate. The representative owes responsibility to the party on whose ticket he contested the election and he must say and do what he is told to do. Rigid party discipline makes representatives cowards and subservient as they lose honesty, courage and independence. Under such a system of representation, popular control, which is the essence of indirect democracy, becomes illusory. Then, the system works mechanically. There is no option for the individual voter who intends to exercise his independent judgment. "He has to choose between two or more candidates who may be either knaves or fools and for none of whom he cares, and decides between two or three issues, none of which meets his approval."<sup>25</sup> When voting becomes so mechanical democracy loses its educational value.

Again, democracy is criticized because it has encouraged growth of class struggle. Candidates who offer themselves for election are generally moneyed men, who can foot election bills and contribute liberally to the party funds. This propertied oligarchy will make laws to the advantage of its own class rather than to the interests of the community as a whole. The obvious result will be the prosperity of the few at the cost of the many, creating thereby a class of vested interests. Modern democracy is, accordingly, stigmatised as capitalistic, and a capitalistic society is a society of unequals. Where inequality prevails democracy does not exist. Social and economic democracy must precede political democracy, if the latter is to succeed.

The most militant and systematic of the contemporary attacks upon the democratic system comes from the Marxists. Democracy, they hold, is the political system of a class society and it reflects the interests and

24. Bryce, *Modern Democracies*, Vol. I, Chap. XI.

25. Asirvatham, E., *Political Theory*, p. 478.

wishes of the **bourgeois** or the dominant class, the propertied class who own productive property. So long as class society endures exploitation of the working class will continue unabated. Marxism concedes that capitalist democracy is a 'real' democracy for the rich, but is only a sham for the poor.

Then, it is said that democracy is a highly expensive form of government. Its governmental machinery is complex and its functions involve much waste of time and money. At many stages the process of administration is just duplication. Take, for instance, the system of bicameralism. Whatever be its political utility, bicameralism is a heavy toll on the exchequer. Elections, which are so frequent in democracy, have become inconceivably expensive. Even in a poor country like India it may cost a candidate nearabout Rs. 50,000, and it is really a very conservative estimate. In the U.S.A. a Senator is reported to have spent half a million dollars over his election. This is surely a waste, not only of money, but also of time and is inconsistent with the spirit of democracy.

The ethical value of democracy is also seriously questioned. Its critics assert that it discounts honesty—honesty in the sense of reasoned conviction, refined habits and integrity of character. There is much falsification and vilification. Election campaigns and party meetings convened for purposes of "nursing the constituency" are very often mud-slinging campaigns where issues are "vulgarised and popularised" before they can make an appeal to the people. Questions are not discussed dispassionately. They are discussed in such a manner as to catch votes. And catching of votes is a nefarious device because it strangulates thought and chokes reason. The voter is not given an opportunity to pause and think. A man who does not think is not serving the purpose of his creation. The result is that he can be easily led astray. The politician does his own job. He would not even hesitate to corrupt the voters. Votes are actually purchased. Bryce who devotes a separate Chapter<sup>26</sup> to "Money Power in Politics" shows that electors, members of legislatures, administrative officials and even judicial officers frequently succumb to the lure of money.

Democracy has also been criticised for excessive interference in the technical details of government. It has insisted and it always insists "on specific mandates to legislators, on direct democratic control of administrative departments, or popular retrial of cases adjudged. Thus, members of parliament and congressmen are harassed and diverted from their proper work by constant instructions from local committees, petitions from constituents, protests from caucuses, demands for explanations from the disappointed, and incessant meddlings from all quarters. The result of this needless or excessive interference is a weak, inefficient and corrupt government. Paralysis seizes the State. The legislature becomes timid and time-serving; the executive feeble and afraid; the judiciary double-minded and unjust. The result is disaster." The critics also maintain that democracy perishes by disintegration. Those in authority cannot afford to displease their electors as tomorrow is the day of election. The

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26. Refer to *Modern Democracies*, Chap. LXIX.

electors are generally seekers of favours and in pursuit of their self-interest pester the Ministers always and everywhere. And they succumb to their demands whether they like or not. The result is obvious. The Ministers and others in authority can neither work with vigour nor can they bring justice under the circumstances. There is also a tendency to insubordination when political pulls matter at all levels.

Lord Bryce, a fervent exponent of democracy, points out the following defects. His conclusions are based upon his personal observations of the six major democracies of the world.

1. "The power of money to pervert administration or legislation.
2. "The tendency to make politics a gainful profession.
3. "Extravagance in administration.
4. "The abuse of the doctrine of equality and failure to appreciate the value of administrative skill.
5. "The undue power of party organisation.
6. "The tendency of legislators and political officials to play for votes in the passing of laws and in tolerating breaches of order."<sup>27</sup>

**Merit of Democracy.** Bryce, nevertheless, points out that the first three defects are common to all forms of government and are not inherent only in democracy. The last three are associated more closely with democracy, but are not insurmountable evils. "Democracy," as Dunning says, "has closed some of the old channels of evil; it has opened some new ones, but it has not increased the stream."<sup>28</sup> Democracy must face self-interest and irresponsibility of power, both of which underlie its major problems. But it has two powerful weapons to fight against these evils: law and opinion. The latter cannot be realised in any other form of government except democracy. While admitting that democracy has defects, Dr. Finer says, but the political, social and economic gifts of democracy endow mankind with vast riches. He observes that under a democratic government, "we have the assurance that the sphere of our private life—our family, our diversions, our worship, our work—will not be invaded except by due process of law in which we have an equal say with any. We rest tranquil that officials and judges will not abuse us, and that they themselves will have to answer for discrimination and bias and unauthorised invasions of our private and public life to a public tribunal in which we, as of right, sit as judge and jury."<sup>29</sup>

In spite of the unsparing attacks to which democracy has been subjected, it still tends to spread, conferring more and more power on the people. The Second World War was fought on the basis of democracy vs. dictatorship. It was a victory for democracy. With it, however, dictatorship did not vanish altogether. It did appear in some new countries

27. *Ibid.*, Vol. II, p. 504.

28. Dunning, *op. citd.*, *Recent Times*, Vol. IV, p. 63. Refer to *Modern Democracies*, *op. citd.*, Vol. II, p. 459.

29. *The Theory and Practice of Modern Government*, *op. citd.*, p. 952.



other than the vanquished. But once the dictators received recognition and their *de jure* authority duly established, they tempered their dictatorships with democratic processes and eventually became elected Presidents in their countries, Nasser in Egypt and Ayub in Pakistan. The United Arab Republic adopted a Republican Constitution in 1964. Even the Communists are so much enamoured of the appeal the term "democracy" has that they characterise the Dictatorship of the Proletariat as the best form of a democratic government.

It means that democracy has a great appeal for all people and they have not lost faith in it. It remains their beau-ideal. The problem of democracy centres on one point whether or not man is increasing in wisdom. The answer is in the affirmative, for while no other form of government gives so much to the citizen as does democracy, at the same time, no other form of government demands so much from him as does democracy. The rights which a democratic government confers on a citizen and the duties he owes as a result thereof make him an active participant in the affairs of the State. He thinks and decides the problems facing him and his country as a rational man and rationality is one of the fundamental tenets of democracy. A corollary to this is that no one has a monopoly of reason. No one is the repository of wisdom. All men have something of value to contribute, however little it may be. The process of making this contribution is democracy. Democracy will, therefore, not perish as long as there is hope in the rationality of man, that is, as long as man is free to think and reason and solve his problems. Thinkers are doers and a citizen of a democratic State does not only think for himself, but he also thinks for the fraternity to which he belongs. Even Faguet feels that "it is necessary to know what a people thinks, what it feels, what it suffers, what it desires, and what it hopes, and all this can be learnt only from the people itself".

Democracy, as said earlier, is more than a form of government. It is a form of society as well, even an ideal or spirit, a doctrine of human optimism. Democracies, says Dr. Finer, "admit the pragmatic nature of their search for perfection, and recognise that of perfection there is no single exclusive principle. Yet they surmise that if such there should be, it is one yet to be discovered in a process of evolution, and if the unfolding is to arrive at unsoundness, it must be founded on the unfettered expression and interplay of all opinion." Democratic societies recognise and welcome change. They must evolve with the development of new points of view, new techniques, new possibilities for human life. With the extension of the concept of democracy old egalitarian doctrines have been discarded. By equality we do not now mean that all men are alike. There are physical, intellectual and moral differences between one man and another. Granting all these obvious variations, the term equality is interpreted to mean equality of opportunity. Democracy is that form of society in which every man has a chance and knows he has it. Democracy, therefore, has the merit of ensuring the twin principles of liberty and equality. Under it there is no class of persons possessing special privileges. All are equal amongst equals under the umbrella of equality of opportunity and equality before law. This is the highest attainment of man's life.

The test of a government is the welfare of the people, and that form

of government is to be preferred which gives full scope to the development of human capacities. Democracy makes authority a trust. Those who exercise authority are chosen by their fellow-citizens for short terms of office and are responsible to them for the exercise of their trust. It implies a recognition of the duties of the government and the rights of the people. Democracy is superior to other forms of government, as John Stuart Mill points out,<sup>30</sup> for two reasons; First, the rights and interests of the individual can be safeguarded only when he is able to "stand up" for them himself. Secondly, there is a greater degree of general prosperity which is more widely diffused as the energies and interests of all the people are stimulated and enlisted in its support. Indirect democracy does not mean actual rule by the people, "for the people rather determine the ends towards which their government shall aim, and watch over those into whose hands they have placed the actual power of administration."<sup>31</sup> In short, it is claimed that popular election, popular control, and popular responsibility are more likely to ensure a greater degree of efficiency and welfare than any other system of government.<sup>32</sup> There is, thus, no justification for the assertion of Sir Henry Maine that Aristocracy is the mother of all progress, that popular government "is characterised by great fragility, and that since its appearance, all forms of government have become more insecure than they were before."<sup>33</sup>

The critics of democracy contend that men are not rational as democracy accepts them to be and, as such, the complicated societies in which we live need the best men in government. They insist that democracy never picks the best and often instead the worst: votes are counted and not weighed is their familiar argument. No one denies that some men are not rational. Neither are men always rational. But neither can one assert that men are always irrational or that all men are irrational. Men are men, with all their frailties. This is true of all governments and democracy is no exception to it. But the simple question is what form of government can provide the scope for the use and flowering of rationality? It is democracy.

Similarly, the merit of democracy does not lie in its efficiency as a form of government. Nobody has ever defended democracy on the grounds of efficiency. It is defended only on the grounds that denial of freedom involves the denial of certain personal values which are more important than efficiency. A good government, tested on the touchstone of efficiency alone, is no substitute for self-government. Democracy is the most cherished goal of self-government. It is a government by the people for their welfare and, as such, it stimulates them to self-education. The supreme test of excellence in government is not the well feeding of the people nor is it to be found in the rigidity of order the State maintains. "It is the character a polity tends to create," as Lowell remarks, "in the citizens by whom it must be sustained. The best government in the long run is one that nurtures a people strong in moral

30. *Representative Government*, p. 52.

31. Dunning, *op. cit.*, Vol. IV, p. 63.

32. Garner, *Political Science and Government*, p. 390.

33. *Popular Government*, p. 20.

fibre, in integrity, industry, self-reliance, and courage." Democracy elevates the character and develops the political intelligence of the masses. It is an active, growing, progressive force inspired by ideals of service to mankind. Self-government is not a mere form of institution to be had when desired. It demands from an average man a certain degree of intelligence, honesty, public spirit and discipline. These virtues give a people, as Woodrow Wilson points out, "self-possession, self-mastery, the habit of order and peace and common counsel and reverence for law which will not fail when they themselves become the makers of law; the steadiness and self-control of political maturity". Democracy, therefore, develops the potential intellectual and spiritual qualities of man. It promotes a better and higher form of national character, because the citizens feel that they are a part and parcel of government.

Democracy is inseparable from a belief in methods of peaceful persuasion, in the ultimate reasonableness of man, and his response to rational argument. A democratic society is not susceptible to revolutions. The people know and feel that they are both sovereign and subjects. If they have any grievances the redress is easy and can be had by peaceful and constitutional means. The political life of the community is based on a complete freedom of discussion out of which emerges public opinion which is the guiding source of political authority. "Since the law will be made and the administration be given momentum and controlled by us, voters," writes Finer, "and since our power can be successfully exerted by association and persuasion, the impulse of the system is to foster fellowship and a common conscience among all men"; the spirit of self-help, self-reliance, self-respect and cooperation and a sense of responsibility in the individual. Does any other form of government offer so much?

**Future of Democracy.** Democracy, no doubt, has its own defects, but "no form of government", as Lowell maintains, "is a panacea for all human ills." Democracy may not have created a sense of fellow-feeling; it may not have drafted the best trained mind to State service, or dignified and purified politics, but in comparison with governments of the past it has justified itself. "Things may be bad today, but they were worse yesterday." The world tried unlimited monarchy, aristocracy and oligarchy at various times and there is no desire to go back to them. Burns has strikingly said, "no one denies that existing representative assemblies are defective; but even if an automobile does not work well, it is foolish to go back into a farm cart, however romantic."<sup>34</sup> We experimented with dictatorship lately and gave it up as a hopeless form of government, since dictatorship is the negation of individual liberty and initiative, and is antagonistic to the development of human personality.<sup>35</sup> It is, accordingly, mischievous to search for another form of government instead of improving what we have. The essence of democracy, in the words of Mazzini, is "the progress of all through all under the leading of the best and wisest." Its supreme value is ethical and educational. As a form of government democracy can flourish and decline in propor-

34. Burns, C.D., *Democracy*, p. 80.

35. See Chap. XII, *Infra*.



tion to the moral and intellectual stature of man. As Robert MacIver pointed out, "there is only one way to keep it in being, and that is through the intelligent perception, permeating the people, of what it is and what makes it precious. We guard our spiritual treasures only by learning to appreciate them."<sup>36</sup> It is in the people alone to preserve it. It can neither be guaranteed by law nor protected by any police system. The future of democracy, therefore, in the last analysis depends upon man and how he accepts man, first as a fellow-citizen and then as a member of that great fraternity of mankind. It is the recognition of this sense of brotherhood that helps to stabilise fellow-feelings and cement the bonds of comradeship. Democracy can only succeed when democratic feelings synchronise with democratic actions at all levels.

But this is an ideal of a perfect democracy. Before such a fraternity is established the existing democratic institutions require immediate examination and readjustment. Political democracy is unthinkable without a social and economic programme and, as such, our democratic institutions must be progressive, adaptable, and flexible to fulfil the present aspirations of the people and provide a precious mould for the future. It is now agreed amongst all that capitalistic democracy is completely out of date as it does not provide an adequate answer to the present social needs. The demand of democracy is speedy responsiveness to public opinion and capitalistic democracy does not provide proper atmosphere for the genuine public opinion to shape itself, for where it is tempted to be active in defence is just where democracy is tempted to be active in offence. The result is obvious. Our social, economic and political orders have become shaky and unless democracy, as a form of government, finds the means of equalizing opportunity and wipes out the existing economic disparities, its future appeal is doubtful. Political need arises for the sake of happy and just life and if a democratic apparatus of government does not provide to man what his basic demands are, the clamour for its substitution by some other form of government, which can assure the same, is not a vain search. But that is groping in the darkness with far distant hope even for the twilight. Democratic light is still there to illuminate the path of life. Clement Attlee has correctly said that capitalistic democracy may not give freedom or equality of opportunity to the mass of the people owing to economic inequalities but democracy is the only method by which economic and social equality will ultimately be achieved.

Finally, democracy is really a question of relationship of rights to duties which have become so complex during the twentieth century. If a nineteenth century democrat could return to this earth and compare the position of the citizens of a century ago, he would certainly not fail to note two striking changes. First, the modern citizen is much more dependent upon the State, not only for the essentials of civilised life but for much of what goes to make up his standard of living. Secondly, as the minimum standard rises, as the citizens come to demand more and more from the State, obligations increase commensurately with rights. Moreover, our conceptions of what men require from the State in order to lead a full life have moved from the purely physical plane

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36. MacIver, R.M., *The Ramparts We Guard*, p. 4.

to include the intellectual, the emotional and the psychological. The increase in responsibilities of citizens demands from them to be articulate and creative to ensure their rights. The future of democracy will certainly depend upon the responsiveness of citizens to the new demands of democracy.

### SUGGESTED READINGS

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|--------------------|---|
| Adams, H.          | : <i>The Degradation of Democratic Dogma.</i>                             |
| Allen, C. K.       | : <i>Democracy and the Individual.</i>                                    |
| Barker, E.         | : <i>Reflections on Government</i> , Chaps. III, VI.                      |
| Bryce, J.          | : <i>Modern Democracies</i> , Vol. I, Part. II; Vol. II, Part III.        |
| Burns, C. D.       | : <i>The Challenge to Democracy.</i>                                      |
| Burns, C. D.       | : <i>Democracy: Its Defects and Advantages.</i>                           |
| Dealey, J. Q.      | : <i>The State and Government</i> , Chaps. X-XI.                          |
| Faguet, E.         | : <i>The Cult of Incompetence.</i>  |
| Finer, H.          | : <i>The Theory and Practice of Modern Government</i> (1954), pp. 937-54. |
| Follet, M. P.      | : <i>The New State</i> , Chaps. XVI, XXI.                                 |
| Friedrich, Carl J. | : <i>Constitutional Government and Democracy.</i>                         |
| Garner, J. W.      | : <i>Introduction to Political Science</i> , Chaps. VI-VII.               |
| Garner, J. W.      | : <i>Political Science and Government</i> , Chaps. XIII-XVI.              |
| Greaves, H. R. G.  | : <i>The Foundations of Political Theory</i> , Chap. XI.                  |
| Hernshaw, F. J. C. | : <i>Democracy at the Crossways.</i>                                      |
| Lindsay, A. D.     | : <i>Essentials of Democracy.</i>   |
| Lindsay, A. D.     | : <i>The Modern Democratic State.</i>                                     |
| MacIver, R. M.     | : <i>The Modern State</i> , Chaps. XI-XII.                                |
| MacPherson, C. B.  | : <i>The Real World of Democracy.</i>                                     |
| Maine, H.          | : <i>Popular Government</i> , Chap. II (1885).                            |
| Maritain, Jacques  | : <i>Man and the State</i> , Chap. V.                                     |
| Mayo, H. B.        | : <i>An Introduction to Democratic Theory.</i>                            |
| Mill, J. S.        | : <i>Representative Government</i> (1890).                                |
| Parkinson, N. C.   | : <i>The Evolution of Political Thought</i> , Chaps. XIII-XIX.            |
| Pink, M. A.        | : <i>A Realist Looks at Democracy.</i>                                    |
| Sait, E. M.        | : <i>Democracy</i> (1929).  |
| Selley, J. R.      | : <i>Introduction to Political Science</i> , Lectures II, VI-VII.         |
| Sidgwick, H.       | : <i>Elements of Politics</i> , Chaps. XXII, XXX.                         |
| Stamps, Norman L.  | : <i>Why Democracies Fail.</i>  |
| Wallas, G.         | : <i>Human Nature in Politics.</i>  |
| Wells, H. G.       | : <i>Democracy Under Revision.</i>  |

## Forms of Government (Contd.)

### UNITARY AND FEDERAL GOVERNMENTS

**The Unity of Government.** In our consideration of the nature of the State, we have shown how unity constitutes one of its most essential attributes. A like quality attaches to its government as well. It is rather unfortunate that the term "government" is employed to designate the several sub-divisions of the machinery made use of by the State for the conduct of its affairs, as, for instance, the government of a province, the government of a city, etc. It would appear from such a use of the term as if there could exist within a State a number of governments at the same time. But it is not so. In a real sense there can be no **governments** within a **government**. What seem to be separate governments for the administration of public affairs for the country as a whole and such sub-divisions as provinces, cities and the like are, in reality, but parts of one governmental system. They all form parts of one integrated scheme of governmental organisation. This point is important to grasp, if we are to properly appreciate the problem of the distribution of governmental powers among its various parts and the character of the governmental system resulting therefrom.

**The necessity for the distribution of governmental powers.** Though a State can have but one government, yet such is the extent of territory over which many modern States exercise jurisdiction and so numerous and varied are their functions that it is impossible for any single authority to do its work from one single centre. Then, it is not only the problem of doing the work. It must be done effectively and efficiently if the purpose of the State is to be truly realised. It is, therefore, imperative that the sum total of governmental powers should be split up and distributed among different organs and authorities, and, together, they all constitute one harmonious scheme for the administration of public affairs.

**Territorial and functional division of powers.** There are two methods of dividing governmental powers, **territorial** and **functional**. The territorial division of powers seeks to divide the territory of the State into a number of distinct divisions and sub-divisions each of which is charged with the performance of certain governmental functions within its boundaries and is provided with a governmental organisation for that purpose. The result of such territorial divisions and sub-divisions is the national government and a series of local governments. The functional method



is that where the distribution to particular organs or authorities is made in accordance with the character of the functions to be performed. These two are not alternate methods. Both are employed in the organisation of all modern governments, but differently. This leads to different characters of the resulting governmental systems.

**Division of powers on territorial basis.** The desirability of distribution of governmental powers among territorial units results not only from the extent of territory of modern States, but also from the fact that many functions of government affect exclusively, or primarily, the interests of particular localities rather than the country as a whole. It does not, however, mean that one single central authority cannot perform these functions. But if it does, the burden of work and responsibility would be too great for effective and efficient administration. It would also result in intolerable expense and delay. Moreover, it is politic to entrust the smaller communities with the affairs that concern themselves alone, because of the presumption that the people belonging to a particular locality can best know and appreciate their needs. Besides, it gives to a larger number of persons an interest and share in political action. "We cannot realise the full benefit of democratic government," says Professor Laski, "unless we begin by the admission that all problems are not central problems, and the results of problems not central in their incidence require decision at the place, and by the persons, where and by whom the incidence is most deeply felt."

The system of territorial sub-division is essentially similar in all modern States. First, for certain purposes which are vital to the life of the nation the entire country is treated as one political unit and the organisation managing all such affairs is called the Central or National government. Next, the country is divided into a relatively small number of important divisions, variously designated as constituent States, Provinces, Cantons, Departments, etc., with a complete governmental organisation. These grand divisions are, in their turn, further sub-divided into smaller areas known as Districts, Counties, Townships, Communes, etc., each also having its political organisation. Further sub-divisions, if there are any, are usually of a purely administrative character. In addition, all States recognise that urban and rural areas present different problems of government and consequently grant to them distinct political organisations for the performance of the governmental duties specially affecting their peculiar interests.

**Analysis of the problem.** But the real problem is that of determining how the sum total of governmental powers shall be distributed territorially. If we analyse this problem, it will be found that in it are involved four distinct questions: (1) What authority shall decide the distribution of powers? (2) What shall be the geographical system of division into different political units? (3) What shall be the powers of government of each territorial unit? (4) What shall be the type of governmental organization in each territorial unit?

For a student of Political Science the first of these four questions, viz., what authority has the legal right to determine the distribution of governmental power among the different territorial units, is much the

most important, for its decision determines the character of the resulting governmental system.

*single delegated gov*  
**Two types of Government—Unitary and Federal.** Two systems are found in modern States with two types of resulting governments, **unitary** and **federal**. A unitary government is a single integrated system of government for the exercise of all powers. The legal sovereign confers all the powers of government in the first instance upon a single central government. The central government may exercise all these powers by itself or create political sub-divisions and delegate to them such powers as it deems wise. The central government is competent to change their boundaries as well as powers at its pleasure by ordinary legislative enactment. A federal government, on the other hand, is a system of government in which powers are divided and distributed between a central government and governments of political divisions. Both sets of governments exercise powers granted to them by the constitution and are each, within a sphere, co-ordinate and independent, that is, both are free and autonomous within the spheres assigned to them by the constitution and none is helplessly dependent on the other for its existence and proper functioning. It means equality of status between the two sets of government, the one is not simply the creation of the other. Both, the national government and the regional governments, enjoy a juridical status and corporate personality.

**Unitary Governments.** Britain, France, Italy, Belgium, Japan, Afghanistan, Iran, and many other countries have unitary governments. There is one integrated system of government and the supreme power belongs to the central government. For administrative convenience and other considerations the country may be divided into political divisions of different categories, but all authority emanates from the central government. These sub-divisions have no original existence of their own. They are the creation of the central government and may be altered at its will. The power exercised by them is only a delegated and subordinate authority which can be increased, diminished or withdrawn at the discretion of the central government. The sub-divisions are, therefore, the agents of the central government and whatever autonomy or governmental competence may have been conceded to them exists by sufferance rather than by constitutional guarantee.

The real point to know is the authority by which such areas are established and their powers and governmental organisation determined. Britain allows maximum autonomy to her local areas, but they are the creatures of Parliament and all such powers are determined and derived from the Acts of Parliament and all such powers can be enlarged or restricted at the will of the government at London. Whitehall also exercises considerable administrative control over all such areas and as Ogg sums up: "All told, however, central control is both wide and deep; not only so, but it is steadily penetrating to new phases and levels."

France is divided into administrative units called "Departments" which are divided into cantons, **arrondissements**, and communes, each having its organs for local administration. But general opinion is that

it is almost misleading to talk about local government in France.<sup>2</sup> Centralization is the essence of French local government—"Centralization raised to a superlative degree. All authority converges inward and upward."<sup>3</sup> The local organs are merely agents of the central government. From the communes to the Ministry of the Interior the administration is linked up with one chain. The Minister of the Interior just "presses a button—the prefects, sub-prefects and mayors do the rest. All the wires run to Paris." Ogg and Zink give a matter of fact summing up of the nature of local government in France. They say, "Not only are there no constitutionally separate spheres of governmental authority, there is really **one** government, functioning equally through Ministers and Parliament at Paris and prefects and councils throughout the country at large. Local areas have only governing organs, local bodies only such powers as are given to them by national law. All of the threads are gathered ultimately in the hands of the central government at Paris. More than this the entire mechanism of departments, **arrondissements** and communes, heads up at a single ministry at the capital, i.e., Interior."<sup>4</sup>

The Government of India, too, was unitary in character under the Act of 1919. Although the Provinces were given a partial responsible government, called **dyarchy**, and the central and provincial subjects were demarcated normally allowing the Provinces to legislate on provincial subjects, yet the Government of India was supreme in all affairs of Provincial government, executive and legislative. The Act of 1919 had vested the superintendence, direction and control of the civil and military government of India in the Governor-General-in-Council who was required to pay due obedience to all such orders as he might receive, from the Secretary of State for India. The Governor-General had wide powers of assenting to, vetoing, or of reserving for the signification, and of returning for further consideration bills passed by the Central Legislature. He could exercise similar powers in relation to bills passed by the Provincial legislatures. The Indian Legislature was competent to make laws for all persons and all things within British India, except that the previous sanction of the Governor-General was necessary for the introduction of any measure regulating any provincial subjects as classified according to the Act of 1919. Similarly, the Central Legislature had the power to repeal or amend any law in force in any part of British India, except that the previous sanction of the Governor-General was necessary for introducing a bill, repealing or amending any Act of a Provincial legislature.

**Merits of Unitary Government.** The unitary type of government represents the most effective type of governmental organisation. The whole problem of the organisation of government is enormously simplified and the system possesses the merit of flexibility. One of the essential features of a good governmental system should be its ability to modify and adjust its organisation, and the manner in which its powers are exercised, as new needs and conditions demand such change. In a unitary

2. *Ibid.*, p. 583.

3. Munro, W. B., *The Government of Europe*, p. 566.

4. Ogg, F. A. and Zink, H., *Modern Foreign Governments*, p. 583.



bution of powers, it cannot be done by any one of the two sets of government. It must be done by amending the constitution as prescribed by law. This means equality of status and this is the essence of federalism, although equality of status does not necessarily imply absolute equality of powers. This is an impossible task and not within the reach of practical politics. The distribution of powers between the central government and regional governments depends upon various factors and every country has its own peculiar problems. The balance of powers is, accordingly, differently tilted in different federations; in some it is in favour of the central government and in others it is in favour of regional governments. But it does not deprive the government of its federal character so long as the one is not rendered thereby helplessly dependent on the other for its existence or proper functioning. By the federal principle, observes Professor Wheare, "I mean the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent." The existence of sphere of activities for each government—central and regional—where they are co-ordinate and independent is the essential quality of federalism. Professor Dicey defines federation as a "political contrivance intended to reconcile national unity with the maintenance of State rights", i.e., the desire for national unity and determination of each individual unit to maintain its identity and independence.

What a federation is, may, thus, be summed up:

(1) A federation is born out of the desire for **union** rather than **unity**. Unity is the essence of a unitary system of government; union that of a federation, for in union lies strength. Federation allows the federating units to preserve their identity by retaining their independent jurisdiction, except in matters which are deemed to be of common national interest.

(2) The States willing to federate lose their sovereign character as soon as a federation is formed. A new State emerges as a result of this union and it, accordingly, becomes sovereign.

(3) The mechanism of a federal government consists of two parts, national or central government, and the regional governments called States in America and India, Provinces in Canada and Cantons in Switzerland.

(4) The powers of government are divided and distributed into these two parts. The central government is given jurisdiction over subjects of a general nature, which are common to all and among others those promoting the union. The regional governments are given power over matters of local importance and utility, which do not require uniformity.

(5) A federation is made, it does not grow. It is made deliberately with a view to having the benefits of union. And since the union establishes a system of dual government in which powers are divided and distributed, a written constitution is the logical necessity of a federal government.

(6) It also involves rigidity of the constitution so that neither the central government nor the regional governments may be in a position to deprive the other of its powers. If any change is desired to be brought about, it must be done by amending the constitution.

(7) The process of constitutional amendment is prescribed in the constitution. This establishes the supremacy of the constitution. The supremacy of the constitution is essential if government is to be federal.

(8) Federation is a permanent union in contrast to various other kinds of unions and alliances between States.

**Distinction between a Federal and a Unitary Government.** We are now in a position to distinctly differentiate between a federal and a unitary type of government. In a unitary government there is a single integrated authority and the entire territory of the State forms one single political unit. For administrative convenience, it may be divided into various sub-divisions, but they are created, their powers defined and their forms of organisation determined by the central government. Federation is a device towards union and not unity. While making a union, the hitherto sovereign States yet desire to retain their individuality and for that matter all issues involved are decided by common agreement and all this is incorporated in the Constitution of the newly established State. Two sets of government are established, one is the national or Central Government and the other governments of the units. The constitution clearly defines the jurisdiction of each set of government and both are independent and co-ordinate in authority within the sphere assigned to each. If any change is desired to be made, the Constitution ought to be amended wherein both the sets of government should participate.

It means equality of status between the two sets of government and this is one of the cardinal principles of federal polity. In a unitary government, it is not so. The central government is supreme and its various political sub-divisions are subordinate to it. The central government can make and unmake them, enlarge or diminish their authority at will, as and when it deems necessary. In a federation, the constitution is supreme. The method of amending the constitution is prescribed therein, which is usually difficult and clearly distinct from the method prescribed for making and amending a statutory law.

All cases of conflict of jurisdiction between the central government and the units of a federation or between one unit and the other are decided by an impartial judiciary, called the Supreme or the Federal Court. It is the guardian of the constitution and it can declare any law, federal or that enacted by any of the units, or an executive order unconstitutional and it cannot, as such, become operative. No such court is needed in a unitary system of government. The powers of its various sub-divisions are of a delegated nature and the authority of the central government is supreme for all intents and purposes.

In a federation there are two sets of laws as there are two sets of governments, each government legislating on subjects assigned to its jurisdiction. A citizen of a federal State must obey the laws enacted by the national as well as local governments. It also envisages double citizenship. In a unitary system of government there is single citizenship.

and a uniform system of law prevails throughout, as in Britain and in France.

**Federation and Confederation.** Sometimes the terms federation and confederation are used interchangeably as if they are one and carry the same meaning and set up a similar form of government. For example, the Swiss Constitution of 1874 is titled as Swiss Confederation and the use of the term is continued in the Preamble and various Articles of the Constitution. Even a modern authority like Dicey uses the terms interchangeably in a single sentence.<sup>6</sup> A federation and a confederation resemble one another inasmuch as that both the words come from the same root, otherwise there is a fundamental difference between the two. "A confederation," says Hall, "is a union strictly of independent States which consent to forego permanently a part of their liberty of action for certain specific objects, and they are not so combined under a common government that the latter appears to their exclusion as the international entity."

(A Confederation is an association of sovereign States formed for the purpose of promoting or achieving certain specific objects.) They unite on a basis of equality and the most obvious motive for such a union is to gain security and strength in foreign relations. A central organisation is set up, usually consisting of a congress of delegates, who represent the governments of the States composing the Confederation. The delegates usually vote by States and under instructions from the governments that they represent. (They) member-States (retain) their sovereignty and they do not create a new State. The instrument which creates a Confederation and defines the powers of the central organisation so created is of the nature of a compact or treaty among the sovereign States. Any member of a Confederation may withdraw therefrom. A confederacy, in the words of Oppenheim, consists of "a number of full sovereign States linked together for the maintenance of their external and internal independence by a recognised international treaty into a union with organs of its own, which are vested with a certain power over the member 'States', but not over the citizens of these States."<sup>7</sup>

Confederations have been numerous in the historical development of the State. More recent examples were the old German Confederation from 1815 to 1866, the Swiss Confederacy from 1815 to 1840, and the union of the Thirteen American States under the Articles of Confederation from 1781 to 1789.

A Confederation is similar to a Federation in two respects. Both in a Confederation and a Federation different States associate with one another for certain specific purposes, and in both cases a central authority is established for the realisation of common objects. Beyond this the similarity does not go and the differences between the two appear fundamental. The most important distinction between the two is that the States entering a Confederacy preserve their full independence or sovereignty and that States entering a Federation lose it. According to the

6. *Law of the Constitution*, p. 603.

7. *International Law*, Vol. I, p. 178.



expressive German term, the former is *staatenbund* or league of States, and the latter is *bundesstaat* or a united State. Through Federation one State appears in the place of several; through Confederation no such change occurs. A Confederation does not bring a new State into being, it only creates a new relationship between existing States.

A Federation is created by a constitution which is legally a law, and which depends upon the consent of the people. A Confederation, on the other hand, is created by an agreement or a compact which is of the nature of an international treaty concluded by the confederating States and, accordingly, it rests upon the consent of the member-States. A Federation is a permanent union and it is illegal for the units composing it to secede or withdraw therefrom. But the confederating States may withdraw from the union whenever they desire and when they do so their action is not illegal, though it may be deemed a violation of international good faith. If there is armed conflict between the various units of a Federation, as there was one between the Northern and Southern States of America on the question of slavery, it is a civil war. If hostilities break out between two or more confederating units, then, it is an international war and not a civil war.

The national or central government in a Federation is created by the Constitution and its powers are defined therein. The federating units can neither destroy the central government nor modify its powers on their own initiative. It can only be done by amending the Constitution and according to the prescribed method. But in a Confederation the member-States create the central authority, sometimes called even government, which they can destroy, or widen or narrow its powers. Control of such an authority or a government over the member-States in a Confederation may be of a shadowy sort. Under the Articles of Confederation, the Congress in the United States could requisition the States for soldiers and money upon a fixed system of quotas and make treaties with foreign countries. But while the States were bound by the agreement to honour the requisition and comply with the treaties, there were no means of compelling them to do so; the power was a power of recommendation. Finally, a Federation deals with the citizens of a federal State; in a Confederation the common organ of authority deals with governments of the member-States; it is a union of States and not of the people. A Confederation has no citizens or subjects to whom its commands can be directly addressed. To sum up:

- (1) A Federation makes a new State as a result of union of the hitherto sovereign States (whereas a Confederation remains an agglomeration of independent and sovereign States).
- (2) A Federation creates a new one single sovereignty, but in a Confederation there are as many sovereignties as are the number of sovereign States that compose it.
- (3) A Federation creates a new nation. It is not so in a confederation. There are as many nations as the number of States composing a Confederation. Each State remains an international entity.
- (4) A Federation is a permanent union and indissoluble. A.

Confederation is temporary and the member-States can withdraw therefrom at their will.) Confederate authorities have no constitutional power to compel a disaffected member to remain within the Confederation.

- (5) In case of conflict between the various units of a Federation, it is civil war. But war between the member-States of a Confederation would be international war.
- (6) In a Federation there are two sets of government with powers divided between the two as prescribed by the Constitution. In a Confederation every member-State has its own system and machinery of government unrelated to the other in any manner. Similarly, every State has its own laws and its own citizenship.
- (7) The statutes and laws in a Federation are made by its legislative assemblies, Central and regional. The rules and regulations which govern a Confederation are the result of the conference of the States wherein their nominees participate.
- (8) A Federation is a union of the people. A Confederation is a union of the States. Both are in the nature of alliances, but a Federation is permanent whereas a Confederation is temporary.

**Pre-requisites of a Federation.** Federal government exists, as said before, when the powers of government are divided according to the principle that there is a single independent authority for the whole country in respect of some matters which are of national importance and concern the interest of the community as a whole. and that there are independent regional authorities for other matters, and each set of authorities is co-ordinate with and not subordinate to the other within its own prescribed sphere. Such a system of government demands the presence of certain conditions which should exist before the federal principle is adopted. According to Dicey there should be, in the first place, a strong desire to have a union. The will to have a union and to be under a single independent government for some purpose is really the basis of a Federation. It means that the federating units must be inspired and bound together by a sense of oneness with a desire to objectify it politically. Unless they become a community of interests sharing each other's weal and woe, their cohesion into a new State is extremely difficult. The second requisite condition is that the federating States must desire union rather than unity, that is, while there should be a desire on the part of the federating States for national unity and to be under a single independent government, they must desire, at the same time, to maintain their individuality and autonomous existence by establishing independent regional governments in some matters at least. The aim of federalism is to give effect to both these sentiments. It is in this context that Dicey defined a Federation as a political contrivance intended to reconcile national unity and power with the maintenance of State rights. Or, to put it in the words of Professor Wheare, the group of States or communities "must desire to be united, but not to be unitary."<sup>8</sup>

But this is not all. Something more is needed. There should not be only the desire to have a Federation, but the power or ability to operate it as well or to maintain it. The States or communities desiring to have a Federation, says Professor Wheare, "must have the capacities to work the system they desire. Federal government is not appropriate unless the communities concerned have the capacity as well as the desire to form an independent general government and to form independent regional governments." The factors which determine their desire or aspirations as well as their capacities to make them operative ideals are the following and may be called the pre-requisites of a Federation. It may, however, be remembered that it is unlikely that all these factors will be present among States desiring union, all the same, it is necessary that most of them must be present if the Federation can really prove to be : enduring mechanism of government.

1. One of the main incentives to closer association is a feeling of homogeneity, what Mill calls mutual sympathies among the population. "The sympathies available for the purpose," he says, "are those of race, language, religion, and above all, of political institutions as conducing most to a feeling of identity of political interest."<sup>9</sup> In his earlier enumeration of the factors making for nationalism, Mill included geographical unity and common memories, that is, a common historical tradition. Obviously both should appear here. They help to create a sense of oneness even if other factors do not exist. Mill observes that, peoples may bind themselves together in resistance to oppression. The Swiss did so and they continued to co-operate in spite of the diversity of language and religion, at a time "when religion was the grand source of irreconcilable political enmity throughout Europe." Exposed frontiers and the danger of aggression from avaricious neighbours dictate union for the purposes of defence. The greater the menace, the closer will be the union. In Canada the desire to unite arose in spite of differences of language, religion and race. And the union of South Africa occurred in spite of similar differences between Dutch and English, who inhabited there.

It will, thus, be clear that strong as the forces of language, race, religion and nationality are in producing a desire for union, such a desire can nonetheless be produced among people who differ in all these particulars, but possess a sentiment of union, i.e., a common sentiment that in union lies strength and this strength can be achieved by a political cohesion. "The sentiment of unity," says Gilchrist, "is the index of a common mind."<sup>10</sup> A great deal, therefore, depends upon the political leadership or statesmanship at the right time which helps to combat the forces of racial, religious and linguistic differences and instil in the people instead a desire to unite itself. The desire for union in Canada was made effective by the leadership of men like John Macdonald, Alexander Galt and George Etienne. In America the people had a community of language, race and religion and similarity of political institutions, but these factors had failed to produce anything beyond a Confederation. It was under the leadership of Washington, Hamilton, Madison, Jay, Benjamin

9. Mill, J. S., *Representative Government*, p. 36.

10. *Principles of Political Science*, p. 359.



Franklin and James Wilson that the delegates at the Philadelphia Convention of 1787, "with a manly confidence" in their country, threw the Articles of Confederation aside and designed to bring unity into the diversity of the new nation. But it happened the other way in India. The Muslim League, under the inspiration of the late Mr. M. A. Jinnah, had all through relied upon the theory of a separate Muslim nation and the creation of a separate homeland for them. If the separatist tendencies based upon race, religion and language had not been fostered so assiduously by the Muslim leadership, the result would have been a united Indian federation rather than the division of the country into two parts, India and Pakistan. "This factor or leadership, of skill in negotiation and propaganda, can make," observe Professor Wheare, "all the difference between stagnation and an inactive desire for union."<sup>11</sup>

2. The areas having the desire to federate should be geographically contiguous, that is to say, the States desiring to federate should not be separated from one another by distant spaces of land and water. They must exist in the vicinity of one another, for neighbourhood makes them a community of interests and the desire for union is inspired by the needs of common defence, common economic advantages, and similarity of institutions. Geographical contiguity also helps to produce a capacity to work a federal union. A federal government demands units to run their own administration as well as to participate in the federal government. "Distance leads to carelessness or callousness," says Gilchrist, "on the part of both central and local governments. National unity is difficult to attain where the people are too far apart."<sup>12</sup> The benefits of common defence and the economic advantages from union cannot be adequately secured. One of the causes of success of federalism in America is the contiguity of all the States. So are the Cantons of Switzerland, the Provinces of Canada and the States of Australia. The Indian Federation also commands contiguity of its component States. But there is no contiguity of area between the two parts of Pakistan. West Pakistan is separated from its eastern counterpart by a wide stretch of land. Eastern Pakistan, as a matter of fact, is land-locked by Indian territory. Federation is, thus, not a convenient mechanism of government for Pakistan.

3. Of all the factors which produce the desire for union, similarity of social institutions and particularly political institutions is the one which is very important, because it produces best the capacity for union. Professor Wheare remarks that the desire for union has practically never been aroused unless similarity of political institutions "was present actually or potentially among those who envisaged the union." Similarity of institutions helps the States to work together and its importance can be realised from the fact that statesmen in framing federal constitutions have ever insisted that all the units should adopt the same form of government. The Constitutions of the United States and Switzerland both require that their respective units must have a republican form of government. In Canada, Australia and India parliamentary system of government had been explicitly established in all the units.

11. *Federal Government*, p. 40.

12. *Principles of Political Science*, p. 359.

4. Not only is it desirable that there should be similarity of political institutions in the federating units, but it is also essential that these institutions should not be autocratic or dictatorial. "For autocracy or dictatorship, either in the general government or in the regional governments, seems certain, sooner or later, to destroy that equality of status and that independence which these governments must enjoy, each in its own sphere, if federal government is to exist at all."<sup>13</sup> Federalism demands forms of government which have the characteristics usually associated with democracy or free government and whatever be the variety of a democratic government, it must ensure free elections and a party system and the existence of the Opposition. There can be no free elections wherever there is autocracy and the representatives in the government are the nominees of the autocrats in the regions. Dictatorship is a one party government and it does not permit existence of Opposition. Elections are just a routine affair wherever dictatorship has existed. This is negation of free elections and, as such, incompatible with the working of the federal principle.

It would have been difficult to operate a union between the Provinces and Princely States as envisaged in the Government of India Act, 1935. The proposed federation would have been, indeed, a combination of strange bed-fellows. The Provinces were given, under the Act of 1935, provincial autonomy with representative institutions and responsible form of government whereas the States were to continue under the personal rule of the Princes. The representatives of the Indian States in the central legislature would have been nominees of their rulers and not elected representatives of the peoples of the States. The British Government, in the words of Sir Samuel Hoare, the then Secretary of State for India, had really intended to counterpoise democracy with aristocracy. Before inaugurating the new Constitution of India in 1950, which declares India the Union of States, all the Princely States were liquidated and homogeneous political institutions established in all the component States of the Union. The States Reorganisation Act, 1956 abolished the distinction between Parts A, B and C States, which the Constitution in 1950 had established. The States Reorganisation Commission aptly remarked that the "only rational approach to the problem, in our opinion, will be that the Indian Union should have primary constituent units having equal status and a uniform relationship with the centre, except where, for any strategic security or other compelling reasons, it is not practicable to integrate any small area with the territories of a full-fledged unit."<sup>14</sup>

Similarly, there should be similarity of social institutions generally. It is true that the desire for union can be created in spite of dissimilarities of social institutions, as it happened in the United States and Canada, "but such differences," says Wheare, "do make a government more difficult, and there is a limit to the degree of dissimilarity which can be permitted. The capacity to work together cannot survive an extreme divergence."<sup>15</sup> The capacity of States to form and work a federal union, he

13. Wheare, K. C., *Federal Government*, p. 47.

14. *Report of the States Reorganisation Commission*, para. 237.

15. Wheare, K. C., *Federal Government*, p. 48.

adds, "depends upon some agreement to differ but not to differ too much."<sup>16</sup>

5. The capacity of States to work a federal union is also greatly influenced by their size. It is desirable that there should be, as far as possible, equality among the component parts of a Federation in their size and population. If there are wide differences in size and population, the federating States are not equal partners in a union. Units larger in size and population and more powerful in resources than the others may be too proud and domineering for smaller ones. They may even overrule the others and bend the will of the central government to themselves. The idea of dominance by some creates suspicion and lack of confidence in others. Confidence is the essence of the will to federate and the capacity to work the federal government. The essential of a Federation is, as John Stuart Mill says, that "There should not be any one State so much more powerful than the rest as to be capable of vying in strength with many of them combined. If there be such a one, and only one, it will insist on being master of the joint deliberations; if there be two, they will be irresistible when they agree and whenever they differ everything will be decided by a struggle for ascendancy between the rivals."<sup>17</sup>

It is true that some divergence in size between the units must necessarily be present before a federal union is desired and this is an important factor in the making and maintenance of federal systems today. But "there must be", succinctly observes Wheare, "some sort of reasonable balance which will ensure that all the units can maintain their independence within the sphere allotted to them and that no one can dominate the others. It must be the task of those who frame and work a federal government to see that no unit shall be too large, and, equally important, none too small."<sup>18</sup>

6. Finally, the federating States must possess adequate economic resources to support both an independent national government and independent regional governments. A federal government establishes a new national government and it must be given sufficient independent economic resources if it is to perform its duties well. But this is not enough. It is also essential for a Federation that the regional governments must also be left with adequate economic resources to run their governments and perform functions assigned to them. If the resources left are not sufficient to support independent regional government, "then no matter how much states desire a federal union and no matter whether a federal constitution is drawn up, in practice federal government will not be possible. Soon the regional governments will be unable to perform their functions or they will be able to perform them only at the price of financial dependence upon the general government, that is, at the price of financial unification." One of the reasons for which the leaders in South Africa rejected a federal union was that the country would be unduly taxed if they were required to support both a central government as well as independent regional governments. A federation

16. *Ibid.*, p. 49.

17. *Representative Government*, pp. 367-8.

18. Wheare, K. C., *Federal Government*, p. 53.



is really an expensive mechanism and it should be adopted only when the units can pay the price for the independence they retain.

**American federalism, the start of an invention.** Federalism is of extreme modernity. Its theory and practice in the modern State are not older than the American federation, which came into existence in 1787. Prior to 1776, the thirteen Colonies were severally and separately bound to Britain. In no way were they connected together. The Declaration of Independence announced the Colonies States, each independent of the Crown and politically independent of each other. But to declare independence, to fight and win war against British Imperialism, and to build a new nation, required union and the result was a Confederation, a "firm league of friendship" under the name of the United States. The declared purpose of the Confederation was to provide for the common defence of the States, the security of their liberties, and their mutual and general welfare.

The war against the British ended and the Treaty of 1783 acknowledged the independence, freedom and sovereignty to the thirteen Colonies. But the Confederation became a league of disgruntled independents which revealed the powerlessness of the Congress created under the Articles of Confederation. It lacked the authority to weld the States into a unity, to mitigate their commercial rivalries, to establish a sound currency, to remove the causes of domestic disorders, and to foster American interests abroad. Washington, Hamilton, Madison and many others, who had laboured to bring together the States in bonds of union, were convinced that the government of the Confederation must either be revised or superseded entirely by a new system. Washington wrote, "I do not conceive that we can exist long as a nation without having lodged somewhere a power which will pervade the whole nation in as energetic a manner as the authority of the State Governments extends over the several States." They all experienced the feeling that all America should be one, a feeling which cements the bonds of oneness giving birth to a nation. "We are now a new nation," said Rush, "...the more a man aims at serving America, the more he serves his colony. We have been too free with the word—independence; we are dependent on each other, not totally independent States...when I entered that door I considered myself a citizen of America."

Here are the germs of a union which now carries the nomenclature of a federal government. The delegates to the Philadelphia Convention of 1784, who were sent by the States for the purpose of preparing a revision of the Articles of Confederation, went beyond their instructions and drafted a new constitution without knowing that they were devising an entirely novel and ingenious scheme of government, and it would become a distinctive and influential contribution of America to the art of government. And here is the illustrious example of right leadership at the right moment.

The Founding Fathers sought to remove the two principal defects of the Article of the Confederation: (1) to remove the predominance of the parts over the whole and to reconcile two different powers, the power of the States and the power of the central government; and (2) to remove the dependence of the government at the centre upon the gov-

ernments of the States that acted as intermediaries between it and the individual. They adopted the principle that the functions and powers of the national government being new, general and inclusive had to be carefully defined and stated, while all other functions and powers were to belong to the States. To make the powers of the central government real, they accepted the fact that it be empowered, among other things, to coin money, to regulate commerce, to declare war, to make peace, and to levy taxes. The central government was endowed with a Congress, to make laws on subjects assigned to its jurisdiction; an executive, with adequate means of enforcement; and a judiciary with authority to preserve an equilibrium between the whole and parts and to uphold the supremacy of the Constitution. Above all, the national government was to derive its support and mandate from the people as voters and to carry its services directly to them as individuals.

**Adoption of federal type of government by other countries.** Once the example of the United States had demonstrated that a federal union could work successfully, a precedent was established that others whose situations were similar could follow. The first to do it was Switzerland. In 1847, the Swiss Confederation was convulsed by an attempt of seven Catholic cantons to secede. The Protestant majority crushed the secessionists, who had formed a separate league called the **Souderbund**. The defeat of the seven Catholic cantons was, in fact, the triumph for the movement of national unity. Next year the Swiss Diet approved a new constitution which created a federal union closely patterned on that of the United States.

The next to adopt was Canada in 1867, although the Canadian federation was produced by a different combination of factors. The direct cause of the federation movement was the racial conflict between the British and French "national groups, two nations warring within the bosom of a single State" as the Durham Report had lamented, which rendered the unitary government unworkable. Economic problems also plagued a divided Canada. Nor was defence unimportant. In 1864, a coalition government took office pledging unification. The final outcome was the North America Act, 1867 and the Dominion of Canada was established. The scheme of distribution of powers between the Centre and the Provinces was just the reverse of the American model and it was essentially due to the lessons of America's civil war of 1860. The Provinces were given exclusive legislative control over a list of enumerated subjects reserving the rest for the Dominion. The Dominion government was also given the power to disallow any Act passed by a provincial legislature, to appoint the Lieutenant-Governor of a Province, and to instruct him to withhold his assent from provincial bills and to reserve them for consideration of the Governor-General, and he might refuse assent to such reserved bills. Finally, appointments to all the important judicial posts were placed in the hands of the Dominion executive.

In the formation of the Australian federation the need for common defence was probably the strongest, though economic issues were also involved. The Commonwealth came into existence on January 1, 1901. The Constitution enumerated substantial powers for the federal govern-

ment, the residue remaining in the hands of the States. The main taxation powers were given to the federal government, with three-quarters of the revenues to be returned to the States during the first ten years.

The Soviet Union adopted the federal form of government as a concession to the various nationalities and tribes inhabiting Russia with a view to building a strong and powerful State. Lenin characterised federalism as a step towards "the most solid unification of the different nationalities into a single, democratic, centralised Soviet State." The Constitution of 1936 gives certain specified powers to the Union government and leaves the residuary powers with the constituent republics and each republic exercises its authority independently of the central government. The Constitution also gives to the constituent republics the right to secede.

When India became independent, the Government of India Act, 1935 provided a working machine in the Provinces, and, as Dr. Jennings correctly points out, "it was not possible to start afresh when Provinces became States." The scheme of federation under the Constitution of 1950 is fundamentally the same as under the Act of 1935. There are three lists of subjects, the Union List, the State List and the Concurrent List, exhaustively enumerated in the Constitution, and the residuary powers rest in Parliament. The Constitution empowers the Union Government to give directions to the States and failure to comply with such directions entitles the President of India to supersede the State government for the time being and thereby bring it under the unitary rule of the Union. The State Governors are appointed by the President and the State government can be superseded on a report from the Governor. The Governor may reserve a bill passed by the State legislature for the consideration of the President. The Upper House of the Union Parliament may, by resolution passed by two-thirds majority, declare a particular subject or subjects in the State List to be of national importance and interest empowering Parliament to make laws thereto. Then, there are the Emergency Powers of the President. When the Proclamation of Emergency is in operation, Parliament is empowered to make laws for the whole or any part of the territory of India with respect to any matter contained in the State List. Finally, the Union Parliament is also empowered to pass legislation implementing any treaty, agreement or convention with another country.

**Methods of distribution of powers.** These variations on the federal theme show that two methods have been adopted in the distribution of powers between the central government and the regional governments. The systems of the United States, Switzerland and Australia are that their central governments have been given enumerated powers whereas the residuary powers are left with their State governments. For the United States, this point is covered by the Tenth Amendment which provides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Swiss Constitution expressly declares that the cantons "are sovereign in so far as their sovereignty is not limited by the Federal Constitution, and, as such, they exercise all rights which are not transferred to the Federal power." The reasons for the



adoption of this system are largely historical. The federal union was in each case formed by the union of previously independent sovereign States. At the time of the union, the latter desired to retain to themselves all governmental power except such as was plainly necessary to confer upon the central government in order that an effective union might be established.

In Canada the method adopted was just the reverse of the United States and Switzerland. Here, too, the historical events determined the course. "All Constitutions," as Jennings remarks, "are the heirs of the past as well as the testators of the future." The persistent racial conflict between the British and the French and the failure of the unitary government coupled with the cool relations with the United States enforced the argument for unification and for a national authority. Federal government seemed the obvious solution. But the experience of the "near-dissolution of the American Union" in the Civil War led British and Canadian statesmen to the conclusion that the Central government must possess more powers than belonged to its counterpart in the United States. The Canadian Constitution—the British North America Act, 1867—accordingly divides the powers between the Provincial and Dominion governments in such a way that the Provinces have exclusive control over a list of enumerated subjects, and the Dominion has exclusive control over the rest, which "for greater clarity" were enumerated also, though not exhaustively. The legislatures of Dominion and Provinces are distinct from each other; neither has the power to alter the constitution so far as the distribution of powers is concerned. In Canada, therefore, enumerated powers are given to the Provinces and residuary powers are left to the Dominion government.

The Constitution of India contains three lists of subjects, the Union List, the State List and the Concurrent List, and the residuary powers rest in Parliament. The total number of subjects exclusively given to the Central government are ninety-seven as compared with sixty-six which are under the actual exclusive control of the States. Concurrent List contains forty-seven subjects upon which both Union and State legislatures make laws. Here is an enumeration more than anything attempted in any other federation. The provisions which deal with a conflict between the Union and State laws are interesting.<sup>19</sup> In general, they require that State laws on concurrent subjects must give way to the law of the Union government to the extent of their repugnancy to such laws. The Union legislature has also been empowered to legislate on any matter in the State List, if the Council of States (Rajya Sabha) passes a resolution by a two-thirds majority declaring a particular subject or subjects of national importance or interest.<sup>20</sup> When Emergency is in operation Parliament makes laws for the whole or any part of the territory of India with respect to any matter enumerated in the State List.<sup>21</sup> Article 253 further empowers Parliament to pass legislation implementing any treaty, agreement or convention with any other country. The last phrase is remarkably vague, as Jennings remarks, be-

19. Article 254.

20. Article 249.

21. Article 250.

cause under this provision the Union Parliament can acquire jurisdiction on any subject, as for example, even over university education "by the simple process of decision of the Inter-University Board of India which is an international body because it contains representatives of universities in Burma and Ceylon."<sup>22</sup>

Dr. Ambedkar, the Law Minister in the Government of India and the principal architect of the Constitution, admitted in the Constituent Assembly that "the constitution has not been set in a tight-mould of federalism." The federal principle has, indeed, been so much modified by unitary elements in the form of control by the Central government over the State governments and the intervention in the conduct of affairs of the State governments has become so proverbial<sup>23</sup> that the Indian Constitution cannot claim to establish a federal union. And the Constitution nowhere uses the word federation. The omission seems to be deliberate and it shows the intentions of the authors of the Constitution. It is true that the federal principle has been introduced into the terms of the Constitution to some extent and Professor Wheare deems it "justifiable to describe it as a quasi-federal constitution,"<sup>24</sup> but a system of government in which one partner can unmake another cannot claim to have even the semblance of a federation. The Indian Constitution may have the form of a federation, but to have federal form does not make it a federation. A Federation is a partnership among equals, oneness of the State with the separateness of the units is its formula, although equality of status does not mean absolute equality of powers.

There are some students of federalism who hold that the federal principle consists in the division of powers in such a way that the powers to be exercised by the central government are enumerated in the Constitution and the residue is left to the regional governments. It is not enough for federalism, they assert, that the central and regional governments should each be independent in its own sphere. That sphere must be marked in a particular way, that is, the residuary powers must lie with the regional governments. Applying this criterion, a government is not federal if the powers of the regional governments are specified and the residue is left to the central government. The Constitutions of the United States, Switzerland and Australia embody the federal principle because they distinctly enumerate subjects over which their central legislatures exercise control and they further provide that powers not so given to the central governments remain with their states and cantons.

But such a test of federalism, in the opinion of Professor Wheare, concentrates on a relatively superficial characteristic. "The essential point," he says, "is not that the division of powers is made in such a way that the regional governments are the residuary legatees under the constitution, but that the division is made in such a way that, whoever has the residue, neither general nor regional government is subordinate to the other."<sup>25</sup> It is, no doubt, true that the question of residuary power is

22. *Some Characteristics of the Indian Constitution*, p. 66.

23. Refer to Anup Chand Kapur's *Government of Indian Republic*, Chap. IV.

24. Wheare, K. C., *Federal Government*, p. 28.

25. *Ibid.*, p. 13.

important as it affects the balance of power in a federation, but this question itself does not make a government federal. The fundamental point in a federal principle is whether the powers of government are divided between co-ordinate, independent authorities or not. It is immaterial what the system of distribution of powers is and where the residuary power rests. Circumstances of each country decide which method is adopted. What distinguishes a federal from a unitary government is that the regional governments are not subordinate to the central government; the one is not simply the creation of the other. Both enjoy a juridical and corporate personality, no matter whether division of powers is made by enumerating the powers of the central government and leaving the rest for the regional governments, or the division is made by enumerating the powers of both the central and regional governments and leaving the residue to the former. What makes the Canadian constitution "quasi-federal" are the matters in which the Provincial governments are subordinate to the Central government, and not co-ordinate with it. These matters are: the power of the Dominion executive to disallow any Act passed by a Provincial legislature even if it falls within its sphere of jurisdiction, the Dominion executive appoints the Lieutenant-Governor of a Province, and it can instruct the Lieutenant-Governor to withhold his assent from Provincial bills to reserve them for consideration by the Dominion executive, and it may refuse assent to such reserved bills if it thinks fit.

These are all unitary elements in an otherwise strictly federal form of constitution. But the law of the constitution is one thing; the practice is another, thus, signifying the difference between a federal constitution and a federal government. Professor Wheare places particular emphasis on this difference and says, "A country may have a federal constitution, but in practice it may work that constitution in such a way that its government is not federal. Or a country with a non-federal constitution may work it in such a way that it provides the example of federal government." In actual practice the unitary elements in Canada have either now become obsolete or are being so worked as not to compromise with the federal principle. "If Canada, therefore," as Professor Wheare concludes, "has not a federal constitution, it has a federal government." The United States, Switzerland and Australia have federal constitutions as well as federal governments, though the process of centralisation in all these countries is assuming alarming proportions. If this tendency is allowed to work unchecked, their governments may be transformed in the very near future into quasi-federal governments.

A concurrent jurisdiction is found in all modern federal governments and with it a provision that when the laws of the central government upon matters in the concurrent field conflict with the laws of the regional governments in that field, then, the regional laws must give way to the central laws to the extent of their repugnancy. The extent of the concurrent jurisdiction varies greatly. In Canada it consists of only two subjects whereas in the United States and Australia the concurrent field is extensive. In Switzerland it is smaller than in the United States and Australia, though wider than in Canada. In India, the concurrent list covers forty-seven subjects. A concurrent jurisdiction is not incompatible with the federal principle. There are, indeed, many good reasons for



providing a concurrent jurisdiction." Professor Wheare is of the opinion that "it is better always, if possible, to admit concurrent jurisdiction, if only perhaps as transitional measure. In most cases it will be unavoidable. But what is likely to work best is a short exclusive list and a rather longer concurrent list."<sup>27</sup>

**Doctrine of Implied Powers.** The Doctrine of Implied Powers has assumed a very great constitutional importance ever since it was propounded by the Supreme Court of the United States. The Constitution only enumerates the powers assigned to the Central Government leaving the rest to the State Governments. But the concluding part of Article 8, enumerating these powers, authorises Congress, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof." Chief Justice Marshall came to the conclusion that this provision authorised the Congress to make laws on subjects, though not specifically assigned, yet **implied** or latent in some other specified powers. This doctrine of Implied Powers "is imperceptibly pervading the decisions of Supreme Courts in almost all federations thus filling up a gap in the specification of powers" and thereby strengthening the Central Government where it has been assigned certain specified powers. Referring to Article 8 of the American Constitution, Charles Beard remarks that it has really proved a Pandora's box of wonders.

### ESSENTIALS OF FEDERAL GOVERNMENT

The division of powers between central and regional governments, which is the essence of federalism, involves three consequences. First, the arrangement must be embodied in a written constitution, secondly, the constitution must be rigid, and finally, the presence of a Supreme Court.

1. **A Written Constitution.** For a federal government the constitution must almost necessarily be a written constitution which defines the relation between the Central Government and the regional Governments, marks out the sphere of each, and is paramount to the constitutions of the regional Governments, if each component part of the union has its own separate constitution. "To base an arrangement of this kind", writes Dicey, "upon understandings or conventions would be certain to generate misunderstandings and disagreements."<sup>28</sup> The articles of the treaty, or in other words of the constitution, must, therefore, be reduced to writing; the constitution must be a written document. Professor Wheare says that if the government is to be federal, its constitution must be supreme. By the supremacy of the constitution he means that "the terms of the agreement which establishes the general and regional governments and which distributes power between them must be binding upon the general and regional governments. This is a logical necessity from the definition of federal government itself."<sup>29</sup> If the central government and the

26. Report of Joint Select Committee on Indian Constitutional Reform, 1934, para. 51.

27. Wheare, K. C., *Federal Government*, p. 83.

28. Dicey, A. V., *Law of the Constitution*, p. 142.

29. Wheare, K. C., *Federal Government*, p. 55.

regional governments are to be co-ordinate with each other, neither must be in a position to override the provisions of the constitution regarding their powers and status which each is to enjoy. Definiteness of constitutional status and powers stimulates the will to federate and creates confidence in the federating units that sanctity of their spheres of jurisdiction will be religiously maintained.

2. **A Rigid Constitution.** The natural corollary from the supremacy of the constitution, and it being a written document, is that it should not be alterable either by the central legislature or by regional legislatures under their ordinary law-making procedure. "The law of the constitution," says Dicey, "must either be immutable, or else capable of being changed only by some authority above and beyond the ordinary legislative bodies, whether federal or State legislatures, existing under the constitution."<sup>30</sup> It is essential for a federal government, says Professor Wheare, that the power of amending the constitution, "so far at least as concerns those provisions of the constitution which regulate the status and powers of the general and regional governments, should not be confined exclusively either to the general government or to the regional government."<sup>31</sup> If it is confined exclusively to one set of the government, it does not give equality of status to both and it is also probable that one which possesses this power may in an ordinary process of legislation make an invasion on the powers of jurisdiction of the other.

It does not matter legally where the power of amending the constitution is placed, but "there can be no doubt," as Professor Wheare suggests, "that practically it is wise to associate both the general government and the regions, either their governments or their peoples, in the process." In the United States amendments to the constitution may be proposed by a majority of two-thirds of both Houses of Congress or by a convention summoned by Congress on the application of the legislatures of two-thirds of states. The proposed amendments become effective when ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states according as one or other method of ratification proposed by Congress. No alterations in the boundaries of the existing states, the constitution further prescribes, can be made without the consent of the legislatures of the states concerned as well as of Congress.<sup>32</sup> In Australia the constitution can be amended<sup>33</sup> on the proposal by an absolute majority of the two Houses of Parliament of the Commonwealth—or in certain circumstances one House—and its ratification at a referendum of the people. If at this referendum a majority of all the electors voting approve the proposed law, and if, in a majority of the states, a majority of the electors voting also approve the proposed amendment, then, it is submitted for the royal assent. It is further provided, that amendments relating to changes in the representation of the states in either House of Parliament or any alterations in the boundaries of the states must be approved by the majority of the electors in the states concerned.

30. Dicey, A. V., *Law of the Constitution*, p. 142.

31. Wheare, K. C., *Federal Government*, p. 57.

32. Article IV, 3(1).

33. Article 128.

In Canada, the power of amending the North America Act, 1867, rests with the Parliament of Britain. No authority in Canada has power to alter the division of powers between Dominion and Provincial governments. The convention as it is, Parliament in Britain would amend the Canadian Constitution on a request from Canada. But there is no settled convention whether the request for amendment should come from the Dominion Parliament and government alone, or from the Provincial Legislatures and governments alone or through some co-operation of the two. "In seven out of the ten amendments passed up to 1947, action was taken by the United Kingdom Parliament on requests from the Dominion government or Parliament alone; there was no consultation with all the provinces nor was their consent asked. The amendments of 1871, 1886, 1915, 1943, 1946 and 1949 affected the provinces, but none was consulted. The amendment of 1930 affected some provinces, and these alone were consulted and their consent obtained. In one case where all the provinces were consulted and asked for their consent—that of 1907—the amendment was passed by the United Kingdom parliament at the request of the Dominion parliament in spite of the fact that one of the provinces concerned, British Columbia, did not give its consent to the proposed amendment."<sup>34</sup> Such a position Professor Wheare views with alarm, although the legal position, he says, "would still be in conformity with federalism for neither Dominion Parliament alone nor provincial parliaments alone could alter the constitution."<sup>35</sup> The question of an appropriate method of amending the constitution by purely Canadian agencies is under discussion in Canada. "It is recognised by Canadians that they must devise some method of making amendments which will be in conformity with federalism, since they wish to preserve the federal elements in their constitution, and that meanwhile the United Kingdom Parliament should be careful not to permit itself to become the agent of the Dominion alone or of the Provinces alone."<sup>36</sup>

The Constitution of India, like the Union of South Africa Act of 1909, makes no pretence of making a federation. Since Professor Wheare says that the "new constitution of India...established, indeed, a system of government which is at most quasi-federal, almost devolutionary in character; a unitary state with subsidiary federal features rather than federal state with unitary features", it will be interesting to note the process of constitutional amendment. The Constitution prescribes three different methods of amending the Constitution. Some parts of the Constitution can be amended by a simple majority in both Houses of Parliament and new states may be created or the existing states reconstituted<sup>37</sup> and upper chambers created or abolished in the states.<sup>38</sup> Then, certain specified subjects, as amendments affecting the method of electing the President, the extent of the executive and legislative powers of the Union or the States, the provisions regarding the Supreme Court, the representation of the states in Parliament, and the method of amend-

34. Wheare, K. C., *Federal Government*, p. 59.

35. *Ibid.*, pp., 59-60.

36. *Ibid.*, p. 60.

37. Article 4.

38. Article 169.



ing the constitution, require a majority of the total membership in each House of Parliament, a majority of two-thirds of the members present and voting in each House of Parliament and ratification by the legislatures of one-half of the states. Finally, for the remaining provisions there must be a majority of total members in each House of Parliament and a majority of not less than two-thirds of the members present and voting in each House of Parliament.

It follows, then, that if the constitution of a country is to be a living constitution, responsive to the needs of the people and times, it must contain a provision for amending it and every federal constitution contains such a provision. But the process of amending the constitution, which provides a federal polity, must be distinct, involving a different procedure, from the ordinary law-making procedure, and all interests and parties in the federation should be participants therein. The method of amending a federal constitution is, therefore, difficult and complex than amending a unitary constitution and the former is, accordingly, peculiarly rigid.

3. **Presence of the Supreme Court.** In a federation the necessity of a supreme or federal court with an authority to interpret the constitution is an established fact. The federal judiciary performs two important functions: (1) it decides disputes of jurisdiction arising between the central government and the regional governments or between one regional government and another; and (2) it keeps different governments within their limits so that none may encroach upon the sphere of jurisdiction of the other. If the federal principle is to really work, it is necessary that there should be an umpire independent of both the central and regional governments which should ever be vigilant to prevent either set of government from disturbing the balance between the centrifugal and centripetal forces. Happy balancing between the two forces is the essence of federalism and there can be no other authority than an independent and impartial judiciary which can act as the guardian of the constitution and thereby protect the constitutional distribution of powers. The need for the federal judiciary has been expressed by Mill in his characteristic way and his words have often been quoted or paraphrased. "It is evidently necessary," he says, "not only that the constitutional limits of authority of each (central and regional governments alike) should be precisely and clearly defined, but the power to decide between them in any case of dispute should not reside in either of the governments, or in any functionary subject to it, but in an umpire independent of both. There must be a Supreme Court of Justice, and a system of co-ordinate courts in every State of the Union, before whom such questions shall be carried, and whose judgment on them in the last stage or appeal, shall be final."<sup>39</sup> Sidgwick says that the more stability is given to the constitution by making the process of changing it difficult, the greater becomes the importance of this judicial function of interpreting its clauses.<sup>40</sup>

Every federal constitution, accordingly, provides for an independent and impartial judiciary entrusted with the work of deciding disputes bet-

<sup>39</sup>. Mill, J. S., *Representative Government*, p. 370.

<sup>40</sup>. *Elements of Politics*, p. 71.

ween the several governments, to uphold the supremacy of the constitution and interpret it. But while interpreting, the judges also expound the constitution by explaining its implications, as the Doctrine of Implied Powers propounded by the Supreme Court of the United States. The Supreme Court derives its authority directly from the constitution and the method of appointment of the judges, their removal and pay, and allowances they are entitled to are all prescribed by the constitution ensuring thereby independence of the judiciary.

### APPRAISAL OF FEDERALISM

**Advantages of a Federal Government.** Federalism is a device which has rendered immense service in the past and may still render in knitting together under a common government peoples whose political interests are alike. Many regard it as a panacea for so many economic and political ills from which the world suffers today and envisage the scheme of a World Federation. Without going into the realm of political speculation regarding the feasibility of a World Federation and accepting federalism as it is, it can be said that small independent States cannot exist in the midst of modern competing States and they find a good substitute in a federal system of government which brings them the advantages of union while maintaining their political autonomy at the same time.

Federalism has, as a principle, the combination of unity and diversity. Such a need exists particularly in countries of great territorial expansion or deep-seated racial, cultural, religious, or linguistic differences. For the solution of such problems, a federal government is probably the only possible answer. It harmonises local autonomy with national unity and thereby provides an equilibrium between the centripetal and centrifugal forces. The central government is assigned functions which are of national importance and general concern. Other matters of local interest that differ in different sections of the country are left to the people of those areas for their solution. In this way, a federal government presents a happy blending of centralization and decentralization.

A federal government prevents rise of a single despotism, checks the growth of bureaucratic authority and conserves the political liberty of the people. Abuse of power by the central authority is more easily checked by vigorous federalism than by any other form of government. Federalism, observes Bryce, allows experiments in local legislation and administration that might be dangerous if applied to the entire country. Territorial division of functions also relieves congestion of legislative and administrative work at the centre. It adds to the efficiency in administration as well because the division of powers is related to the actual needs of life.

Federal governments also afford excellent schools for political education as they are founded on the democratic principles of free election, free criticism and representative institutions. Each citizen has a full-fledged miniature government relatively near the abode on which he can make his mark far more easily than on national administration. He is encouraged to take greater interest and initiative in public affairs. His needs and aspirations also are better satisfied.

**Drawbacks of a Federal Government.** It cannot be denied that federalism has its disadvantages. The constitution framing body of a federal government has to bear the burden not only merely of providing for two sets of government, but also of determining the manner in which the total governmental power shall be distributed among them. This is a task of such difficulty that a satisfactory performance of it at one time is impossible. What might formerly have been safely left to the separate units may with the lapse of time and under changed conditions demand a national regulation and decision. This leads to bitter contests regarding the jurisdiction of the two governments and the political histories of the United States and other federal countries are marked by such controversies. "The proper adjustment of central to local governments thus becomes," writes Gettel, "a constant source of difficulty and the danger of rebellion or the formation of sectional factions is always present."

Then, the pre-requisite of a federal government is the supremacy of the constitution which implies a written and rigid constitution. Supremacy of the constitution means that the terms of the agreement, which establish the central and regional governments and which distribute powers between them, must be binding upon them. If any change is desired to be brought about, it must be done by amending the constitution as prescribed by law and not by the unilateral action of any of the two sets of government. But the process of amending the federal constitution being difficult and circuitous, it is not possible to get the desired results as and when the needs of the people and the country demand. It is also possible that the capricious policy of a number of regional governments may create unnecessary difficulties in the passage of the amendment. All constitutional amendments in the United States require ratification by three-fourths of the States after having been passed by two-thirds majority of Congress. There is no prescribed time-limit for ratification unless specifically determined by a resolution of Congress. Absence of such a prescription makes the issue a plaything of the States and indefinite delay takes away the purpose underlying the amendment. For example, the child labour amendment was proposed by Congress in 1924, without specifying the time-limit for ratification. So far only twenty-eight States have ratified it, the last one being Kansas in 1937. The American system of constitutional amendment also makes it possible for thirteen small States to pool together and hold up an overwhelming majority of the remaining States in their efforts to make a much wanted constitutional change.

The powers of government in a federation are divided among as many sets of officials as there are major political divisions plus, of course, the central government. The organs of government, instead of being parts of one highly integrated piece of administrative machinery, are parts of as many different administrative systems. Being co-ordinate, as regards their status, uniform policy for a common good can only be secured by a voluntary agreement among all to co-operate. This is something which it is often difficult if not impossible to secure. The particular interests of all the competent units of a federation are not always identical and each unit is likely to pursue a policy which seems to be conducive to its own interests over those of the State as a whole. More serious still, this



difference of interests may bring the several units into sharp conflict with each other or collectively into conflict with the central government. Even when there is no conflict of interest, great loss often results when a given work is not under a single direction.

DCM ① (In the conduct of foreign affairs, the critics of a federal government maintain, it exhibits inherent weakness and inconsistency. "The experience of the United States in particular has shown that the individual members of the federal union, by virtue of their reserved powers over the rights of person and property, may embarrass the national government in enforcing its treaty obligations in respect to aliens residing in the United States." When internal differences are carried into foreign relations, the national government loses its international prestige. <sup>+A</sup> fluctuating foreign policy leads to manifold troubles. Federation becomes a weak government both internally and externally. Similarly, in times of war federal government may sometimes be found lacking in promptness of decision and firmness of action, which national emergency of this kind demands. *+and involves it in international complications.*

A federal government is financially expensive, since there is much duplication of administrative machinery and procedure. There are as many sets of legislatures, courts and administrative departments, with Ministers and Ministries, as the number of the units composing the federation plus the top-heavy identical institutions at the Centre. And all function within the framework of a democratic machinery which is often cumbersome and usually expensive. Moreover, it is wasteful of time and energy, in that it much depends on negotiation, political and administrative, to secure uniformity of law and proper administrative fulfilment thereof.

Finally, though federation is an irrevocable union yet the possibilities of secession are there. Regional loyalties seldom die and linguistic differences ever remain uppermost. There is conflict of economic interests too. Then, there are racial prejudices. The American civil war is a reminder to such tendencies. The United Arab Republic disintegrated with the separation of Syria. There is a ferment now in Canada. In May, 1964, the Quebec legislature set up a committee to report on all the implications of a breakaway from the federation. The French-Canadian grievance has been building up over the rival scope of the two languages and the two cultures in Canada. But more realistically the problem is economic. The development of the English-speaking Provinces is held to be at the expense of the French-speaking Quebec. So far, the separatist groups have not spelt out their separatism in terms of outright secession, but it will be a sad development in the history of federalism, if ever it happens. India too is now torn asunder into seventeen linguistic States with territorial disputes ever plaguing the solidarity of the nation. The linguistic fanatics are still not content. They preach and endeavour for further sub-divisions without any considerations and regard of the actual political needs of the country.

**Tendency towards Centralization.** The theory and practice of federalism has undergone a radical change and the fact of the matter is that in all federal States there has been a steady movement to counteract the disadvantages resulting from a constitutional distribution of powers by progressively increasing the powers of the Central Government. In the

United States it has been accomplished partially by constitutional amendments, but, chiefly by giving to the clauses of the Constitution defining the powers of the Central Government a broadness of interpretation that certainly was not in the contemplation of the framers of the Constitution. The doctrines of implied powers, inherent powers, of the sanctity of contracts and many other decisions of the Supreme Court stand conspicuous in extending the influence or control of the national government over functions which formerly were considered under State jurisdiction. In Australia, likewise, a centralising process has been sanctioned by the High Court. "The Australian States," says W.K. Hancock, "have learned in bitterness that it is not always the residuary legatee who comes off best under a will. Sometimes the specific legatee takes the bulk of the estate and leaving him nothing but debts."<sup>41</sup>

In Switzerland four important factors have contributed to the process of centralisation: war, economic depression, the demand for ever increasing social services, and the mechanical and technical revolution in transport and industry. These factors are not peculiar to Switzerland. They are as much in the Swiss as in other federations. "Intensive government," says Sait, "is the reaction against intensive pressure and the pressure may be internal as well as external." War is always a greater centraliser. It increases the control of the State over society, since protection and security become the nation's paramount concern and these are pre-eminently the primary functions of the State. War demands, in order to win it, unified command, co-ordinated plans and prompt action. It also means mobilising the necessary activity and powers of all institutions of government, central and regional. The obvious result is that the constitutional limits which tend to check the jurisdiction of the various parts of government become unworkable. It is, of course, true of a world that is scared by past wars and scared of new ones. And no country can afford to wait for defence until war is declared. It must always be prepared to ward off the probabilities of war and to win, if it actually comes. It means the ability to man the industrial resources of the country and to apply nation's scientific knowledge to the task of defence. Everything from the physics courses taught in the schools to the conservation of natural resources and the maintenance of economy, affects the war-making potential.

New Deal legislation of President Roosevelt and the Supreme Court's attitude thereto is clearly indicative of the rapid development of centralisation. The New Deal was devised as the new means of combating a new national emergency, the depression. The world today is as much scared of depressions as it is scared of war and this emphasises the recognition of the need for reallocation of powers in a new balance, not excluding strong local organs of government. "Since the New Deal," says Lipson, "the situation has changed almost beyond recognition. Federal-State relations have become ampler and closer. Federal-local relations have been established. Federal-State local co-operation is now frequent."<sup>42</sup> Much of this is due to the more generous use of the device of

41. *Australia* (1930), p. 117.

42. *The Great Issues of Politics*, p. 313.

the conditional grant-in-aid. A Committee of the Council of State Governments, appointed in the United States, defined federal grant-in-aid as "payments made by the national government to State and Local governments, subject to certain conditions for the support of activities administered by the States and their political sub-divisions". As these grants are conditional, it is a matter of common experience that one who gives money must see the fulfilment of those conditions. The conditions that the central government imposes are in respect of the purposes and principle of service in question, the structure and procedure of administration, the recruitment and management of the personnel, the furnishing of reports, and submission to inspection. The grant-in-aid, accordingly, "offers a middle ground between direct federal assumption of certain state and local functions and their continuation under exclusive state and local financing, with haphazard coverage and diverse standards. It makes possible the achievement of national minimum standards, yet retains most of the benefits of administration close to the people."

All federal countries are moving towards a unified economic and social system co-extensive with its whole territory. No single problem can be isolated and looked at from a local point of view or local solution may be found for local problems. As population grows more dense and industry is highly developed, the mechanism of life becomes so complicated, its parts so closely entwined, the activities in various areas so intimately bound together that local regulation will no longer suffice. If business corporations and trade unions become big, developing into nation-wide organisations and producing goods that will move across state lines, it is evident that labour relations can no longer remain within the exclusive jurisdiction of the states. If vagaries of nature are to be counteracted by harnessing nature, then, agriculture can no longer remain a state subject. The authority that is wider and wealthier can only sponsor huge irrigational schemes, like the Damodar Valley Project and Bhakra-Nangal schemes in India.

But the great centralising factor has been the contrast in the attitude of the people towards the central government and the governments of their states in former times and in our own time. At the time of the making of the federations of United States, of Switzerland, and of Canada there were differences of nationality, but as time went on a common nationality came to impose itself upon the differences. Citizens of these federal States came to feel that their primary interests and allegiance was in and to the nation as a whole rather than to their particular states. Thus, there is not only the constantly increasing tendency to look to the central government for action in meeting their problems as they rise, but the growing conviction that only by the action of the central government their problems can be satisfactorily solved. A good part of President Roosevelt's New Deal policy sought to permanently regulate matters that had hitherto rested with the states. But many Americans justified this "usurpation" on the ground that the pressure of economic and social problems could be borne effectively only by the Federal Government. The old school of states' rights, therefore, is steadily losing its hold upon the people, and in its place is arising the tendency to look to the central government for the solution of the more important political, economic and



social problems. This makes a fundamental change in the theory and practice of a federal government.

**Future of Federalism.** The result is obvious. There is one general tendency in all federal governments that the central governments have increased in importance and strength at the expense of the regional governments. Some students of federalism have concluded from this tendency that federal government represents but an intermediary stage in the political development of the modern State. "States move forward," says Sait, "from alliance to confederacy, from confederacy to federation, from federation to complete union, that is, from lower to higher forms. These successive forms, therefore, may be regarded as a biological series."<sup>43</sup> W. F. Willoughby maintains, "This step taken (the formation of a federation), there immediately develops a steady growth of the spirit of nationalism and, in response to needs actually felt, a progressive development, both absolutely and relatively, of the powers of the central government as opposed to those of the states. So marked is this that it may almost be said that from the moment the system of multiple government is adopted, the tendency is for efforts to be made to get away from the consequences of the decision that has been made."<sup>44</sup> To Lipson it seems an unavoidable conclusion that "older patterns of decentralization—whether in the form of local autonomy under a unitary system or of states' rights in a federal union—were doomed to dissolve in the corrosive acids of twentieth century politics, economics and technology: Virtually all the great driving forces in modern society combine in a centralist direction."<sup>45</sup> The critics of federalism further assert that integral economic planning and true federalism are incompatible. A planned economy, it is maintained, is national in character and it is an expression of unity, while federalism is based on division and diversity.

Professor Wheare does not accept the point of view that federal government is really no more than a stage towards unitary government. He says, "This is a prophecy, not an historical judgment, for so far, no federal government—as I define it—has become a unitary government."<sup>46</sup> He admits that war and economic depression are the enemies of federal government and if they occur frequently, they "will almost certainly turn federal governments into unitary governments." So far as the growth of social services is concerned, he does say, that they will tend towards the same end. But he also says that the growth in the powers of the central governments is only one tendency. "One other tendency at least must be noticed. It has not been the general governments alone which have grown in strength. The regional governments have also expanded. In all the federations the regions now perform functions which at the establishment of the federations, they performed either not at all or to a much less degree than now."<sup>47</sup> This is one element in a tendency, he adds, "which may be broadly stated by saying that there has been strong in-

43. *Political Institutions, A Preface*, p. 375.

44. *The Government of Modern States*, p. 185.

45. *The Great Issues of Politics*, pp. 315-16.

46. *Federal Government*, p. 253.

47. *Ibid.*, pp. 255-56.

crease in the sense of importance, in the self-consciousness and self-assertiveness of the regional governments. This has gone on side by side with the growth in importance of the general governments and it has obviously been stimulated by it."<sup>48</sup> It has led to a sense of grievance in the regional governments that their position is being imperilled by this tendency of centralisation. "And in some cases they have felt so unjustly treated by the general governments that they have talked of resigning from the federation. The secession movement in the State of Western Australia was one example."<sup>49</sup> Professor Wheare's emphasis that the reasons which originally prompted the independent States—one-ness of the State with the separateness of the units—to form the federal union and not a unitary union have not ceased to operate. True it is, he further says, that every region in a federal system does not feel the desire for independence to the same degree, "but in every federation a few regions feel it so intensely that no attempt could be made to impose uniformity without bringing into view the possibility of breaking the union in pieces."<sup>50</sup> Keeping these considerations in mind Professor Wheare concludes that "the prospect of federal government is not so short as is suggested by those who concentrate entirely on the tendency of the general government to increase at the expense of the regions. Federal government is still desired by some regions in all the federations. There is no conclusive evidence that federal government is to be no more than a stage in the process towards unitary government."<sup>51</sup>

Professor Kennedy, who takes a more liberal view of the minimum requirements of a federal constitution, observes, "The real questions to decide, shorn of all theories are these: Are the national and provincial governments related to one another as principal and delegate? What is the real and precise nature of authority which they exercise within their spheres?..." The regional governments have a juridical status and a corporate personality. They are clothed with plenary powers, legislative and executive. The provisions of the constitution relating to the scheme of distribution of powers cannot be unilaterally altered. Finally, in every federal country is the provision of an independent tribunal in the Supreme Court to give interpretations to the constitution with finality. This is the crux of the whole problem.

People and countries have not lost faith in federalism so far. While federal States have shown signs of closer unification, other States, especially new-born, are adopting federal constitutions and many writers predict a further union of States on federal basis. It happened very recently in the case of Egypt and Syria with the consequent emergence of a federation named the United Arab Republic, though Syria has since seceded. Nationalist leaders from many parts of Africa met from December 5 to 12, 1958 to attend the All-African People's Conference with a view to getting rid of the remaining colonial regimes on their continent, and to begin the first steps toward federation of their existing States. Federal-

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48. *Ibid.*, p. 256.

49. *Ibid.*

50. *Ibid.*, p. 257.

51. *Ibid.*

ism, in fact, has made an important contribution to the solution of world politics. By reconciling the claims of local autonomy with those of national unity, federalism paves the way for the adjustment of inter-State disputes. Even a great admirer of unitary government, Professor W. F. Willoughby admits that we should not "close our eyes to the immense service which the development of the idea of multiple government has rendered in the past and may still render in knitting together under a common government peoples whose political interests are largely identical but which for sentimental reasons are unwilling wholly to surrender their political autonomy."<sup>52</sup> Federal government, as Professor Wheare says, does not stand for multiplicity alone. "It stands for multiplicity in unity. It can provide unity where unity is needed, but it can ensure also that there is variety and independence in matters where unity and uniformity is not essential."<sup>53</sup> This exercise in self-governments, he further says, "is sufficiently valuable to be worth the cost it entails, and federalism marches towards triumph."

The traditional theory of federalism stands modified to fit into the needs and demands of the present conditions. The emerging concept is that of "co-operative federalism," which has recently gained wide advocacy. The admirers of co-operative federalism argue that no developing society can afford the luxury of a rigid division of powers which was possible in the social and economic conditions of eighteenth century. Economic planning on a unified basis, they contend, has the effect of centralizing power and direction, but this tendency is consistent with those tendencies of co-operative federalism which have operated in the federal systems of the United States, Canada and Australia.<sup>54</sup>

### SUGGESTED READINGS

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|---------------------------------------|---|
| Aiyar, S. P., and<br>Usha Mehta (Ed.) | : <i>Essays on Indian Federalism.</i>   |
| Asok Chanda                           | : <i>Federalism in India.</i>   |
| Beard, C.                             | : <i>American Government and Politics.</i>  |
| Bryce, J.                             | : <i>The American Commonwealth</i> , Rev. ed. 2 Vols.   |
| Dicey, A. V.                          | : <i>Introduction to the Study of the Law of the Constitution.</i>  |
| Elazar, D. J.                         | : <i>The American Partnership; Inter-governmental Co-operation in the Nineteenth Century United States.</i> |
| Finer, H.                             | : <i>The Theory and Practice of Modern Government</i> , Chaps. X, XI.                                       |
| Garner, J. W.                         | : <i>Political Science and Government</i> , pp. 346-356, 412-422.   |
| Goodnow, F. J.                        | : <i>Social Reform and the Constitution.</i>  |
| Kennedy, W. P. M.                     | : <i>The Constitution of Canada.</i>  |
| Lipson, L.                            | : <i>The Great Issues of Politics.</i>  |
| Lowell, A. L.                         | : <i>Government of England</i> , Vol. II. Part III.   |

52. *Op. citd.*, p. 416.

53. Wheare, K. C. *Federal Government*, p. 260.

54. Aiyar, S. P., and Usha Mehta (Ed.), *Essays on Indian Federalism*, p. 121.



- MacIver, R. M. : *The Modern State*, Chap. XII.  
MacMahon, A. W. : *Federalism Mature and Emergent.*  
Mogi, B. : *The Problem of Federalism*, 2 Vols.  
Rockefeller, N. A. : *The Future of Federalism.*  
Sait, E. M. : *Political Institutions, A Preface*, Chap. XVII.  
Santhanam, K. : *Union State Relations in India.*  
Sharma, B. M. : *Federal Polity.*  
Sidgwick, H. : *Elements of Politics*, Chap. XXVI.  
Wheare, K. C. : *Federal Government.*  
Willoughby, W. F. : *The Government of Modern States*, Chap. X.

## Forms of Government (Contd.)

### PARLIAMENTARY AND PRESIDENTIAL GOVERNMENTS, AND DICTATORSHIP

Modern democratic governments are further divided into Parliamentary and Presidential governments. The former also carries the name of Cabinet or responsible government and the latter is called non-Parliamentary or non-responsible or Congressional government. This classification is made on the basis of the principles governing the relations between the executive and the legislature. If the Legislative and Executive departments are unified and co-ordinated under the control of the same persons, so that they must work in harmony, such a system of government is called Parliamentary or Cabinet. It is responsible, because the cabinet is responsible to the legislature for its political policies and public actions and it remains in office so long as it retains the confidence of the legislature. (If the Executive and Legislative departments are largely independent of one another, but each possessing checks on the powers of the other in order to make the power limited, controlled and diffused, the system of government is Presidential.) Here the head of the executive is constitutionally independent of the legislature in respect of the duration of his tenure and is not responsible to it for his political policies; hence it is non-parliamentary or non-responsible. The office of the President in such a system of government goes by calendar.

**Parliamentary or Cabinet Government.** In a Parliamentary or Cabinet form of government a clear distinction is made between the nominal and the real executive. The chief executive Head of the State, whether he be a hereditary King, as in Britain, or one like the President of India who is elected for a fixed number of years, possesses only nominal powers. He is the chief executive, but not the executive. He is a titular Head of the State, although his authority is *de jure*.<sup>1</sup> Legally, he possesses all the powers and privileges which the Constitution and law may confer upon him, but in practice he exercises none of them. One may say that the legal powers of the executive Head of State, under a system of Parliamentary democracy, have fallen into disuse.

1. The Constitution of India, vide Article 53, declares that "the executive power of the Union shall be vested in the President...." This is American-sounding phrase: "The executive power shall be vested in a President of the United States of America."

The real executive power rests with the Cabinet. The Cabinet Ministers are the real functionaries who run the government. The Cabinet is a committee of the Legislature and, in a two-party system, it is normally composed exclusively of the majority party. Under a multiple party system, a coalition government may be formed by several parties, to work together on an agreed programme. It is immaterial whether the existence of the cabinet is *de jure* or *de facto*. In Britain, the cabinet is the child of chance. Although unknown to law, yet it is the pivot around which the whole political machinery revolves. It is the supreme directing authority; the magnet of policy, as Barker calls it, which co-ordinates and controls the whole of the executive government, and integrates and guides the work of the legislature.

There is a sharp distinction between a Cabinet and a Ministry or the Council of Ministers. The Cabinet, wherever Parliamentary system of government exists, has an extra-constitutional growth and consists of about twenty or less Ministers, who are the most influential and the most important of the Council of Ministers or the Ministry. These members of the Cabinet meet collectively, under the chairmanship of the Prime Minister, generally once a week, decide upon policy and in general 'head up' the Government, whereas the Council of Ministers or the Ministry includes some fifty or more Ministers of different categories—Cabinet Ministers, Ministers of the Cabinet rank, Deputy Ministers and Parliamentary Secretaries. The Council of Ministers or the Ministry has no collective functions. It never meets as a whole and it never deliberates on matters of policy. The duties of a Minister, unless he is a Cabinet Minister, are individual duties relating to the administrative Department or Departments of which he holds the charge. The Cabinet is, thus, the supreme directing authority; the motive power of all political action or, as Sir John Marriot describes it, "the pivot round which the whole political machinery revolves." Such a system of government is named the Cabinet government, as it is the Cabinet which is the master of the government.

The Council of Ministers is headed by the Prime Minister. He is the captain of the team which plays the game of politics in accordance with the mandate which the majority party in the legislature, of which the Prime Minister is a duly accredited leader, had received at the general elections. The Prime Minister performs four important functions: (1) he is the head of the Ministry, that is, the government of his country; (2) he is also leader of the Legislature of the country—the one whose intervention in the debates has the greatest weight, who states and interprets government policy, who is responsible to get the approval of the Legislature for the policy of his government; (3) he is the person through whom the head of the State, King or President, normally communicates with the Cabinet, with the Legislature, and ultimately, with the country; (4) he is the head of his party and responsible for the maintaining of harmony between the party and the majority that returned it to power.

The Constitution of France specifically provided for the Council of Ministers (*conseil de ministres*). It further provided that each of the acts of the President must be countersigned by the President of the Council of Ministers (the Prime Minister) and by a minister. This reduced the



authority of the President to that of political impotence. The ministers being responsible to the legislature it was naturally their right to determine when the President should exercise his authority. The Constitution of India vests the executive power of the Union in the President, but subject to the qualification that it may be exercised by him in accordance with the constitution and the law.<sup>2</sup> The constitution and the law provide that there should be a Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions,<sup>3</sup> and that the Council of Ministers shall be collectively responsible to the House of People.<sup>4</sup>

**Mechanism of the Parliamentary or Cabinet Government.** The Ministry or the Council of Ministers will, according to the party system of the country, be made up either entirely of members of the same political faith (single-party system) or of members of somewhat differing affiliations, yet able to agree on a programme of immediate action (multiple-party system). In any case the Ministry is formed by the person who seems to the Head of the State best able to form a team in conformity with the existing parliamentary majority. Under the single-party system the choice of the Head of the State is obvious and he summons the leader of the majority party to form the government. He is the only possible Prime Minister and there is no discretion. But when the party has not elected its leader or when there is not one single party having a legislative majority, as it is usually under the multiple-party system, the Head of the State has a real choice. The Ministers are by law or by binding convention members of the legislature. Sometimes a Minister may not be an elected member of the legislature, for example, Ramsay MacDonald and Malcolm MacDonald were both members of the Cabinet in Britain, from November 1935 until early in 1936, though they were not members of Parliament. But the House of Commons is extremely critical of such exception and Ministers remain out of Parliament only while they are trying to find seats. If they cannot get in and are unwilling to be created peers, they resign from their offices. The Constitution of India provides that a Minister may not be a member of either House of Parliament for a period of six consecutive months.<sup>5</sup> But such a Minister ceases to be a Minister at the expiration of that period unless he is duly elected. In Britain no one may speak in either House of Parliament unless he belongs to that House. In India a Minister enjoys the privilege of occupying a seat in either House of the legislature, of being heard, and of participating in its deliberation, but with the right to vote in a House of which he is a member.

A Cabinet government works on the well-accepted principle that Ministers are responsible to the legislature for all their official acts and they remain in office so long as they retain its confidence. This is called ministerial responsibility and it is this responsibility that gives to the Cabinet government the name of a responsible government as well. In Britain, legally, Ministers hold office during the pleasure of the King. But

2. Article 53 (1).

3. Article 74 (1).

4. Article 75 (3).

5. Article 75 (5).

a legal truth there is a political untruth and the pleasure of the King really means the pleasure of Parliament. The Constitution of India also provides that Ministers hold office during the pleasure of the President.<sup>6</sup> But the pleasure of the President vanishes when the Constitution simultaneously prescribes that the Council of Ministers is collectively responsible to the House of People (Lok Sabha).<sup>7</sup> Ministerial responsibility is the essence of Cabinet system of government. Responsibility to the legislature means that so long as the policies and official conduct of the ministers command support of the majority of the members of the legislature, they continue to hold the reins of office and govern the country. But as soon as the majority is reduced into a minority and the Ministry loses the confidence of the representative House, House of Commons in Britain, and the House of People (Lok Sabha) in India, it must resign office and give an opportunity to the Opposition to assume office, or the legislature may be dissolved on the advice of the Prime Minister and new elections held in order to ascertain the opinion of the electorate. The party returned in majority to the legislature as a result of general elections, then, forms the Ministry. The second alternative is more common and is generally resorted to. The legislature reveals its disapproval of the acts of the Ministry either by an adverse vote on an important measure, or by a specific vote of no-confidence.

"The ministerial office," says Dr. Garner, "is not incompatible with legislative mandate."<sup>8</sup> It means that the executive and legislative functions are "inextricably co-mingled" and there is no such separation between the executive and legislative powers as that which forms the distinguishing mark of the American system of government. On the contrary, there is a close and intimate inter-dependence of both the Executive and the Legislative departments. Professor Dicey emphasised that the Cabinet system is found on a fusion of the Executive and Legislative powers and, at the same time, upon the maintenance of harmonious relations between them. Bagehot defines cabinet as a "hyphen that joins, the buckle that binds the executive and legislative departments together." The members of the cabinet are members of legislature as well as heads of the Executive Departments of the Government. They are responsible for defining the broader lines of national policy, collectively constituting the government, and running the administration. They resolve, initiate and pilot in Parliament legislation which they deem essential for carrying out their policy. The Ministers must always be prepared to answer questions put to them while the legislature is in session; impart all information which members consider necessary to elicit from the government, and defend their policies whenever questioned, criticized, or when called upon to give an account of their official conduct. The cabinet, therefore, is a committee of the legislature sharing in both the creation and administration of law and responsible and subject to the control of the legislature. It cannot successfully function independently of the legislature. Such a form of government is aptly designated as Parliamentary type of government.

6. Article 75 (2).

7. Article 75 (3).

8. Garner, J. W., *Political Science and Government*, p. 324.

Cabinet government is a party government. It comes into office as a unit and goes out of office as a unit. It means that the essence of the Cabinet government is its solidarity, a common front, and it becomes binding on every member of the Cabinet, and, of course, on every minister outside the Cabinet, to pursue an agreed policy for which all accept responsibility and on which they stand and fall together. It is, therefore, important that Ministers must essentially belong to one single political party. Collective responsibility, which is the *sine qua non* of the stability of government, can be obtained only when Ministers come in as a team and go out as a team. When a Ministry is composed of heterogeneous parliamentary groups, it is most unstable, for compromise, which brings the various groups together, is sure to break down at the slightest pretext. In a composite cabinet there is no homogeneity in the ranks of Ministers and there is no team spirit which can ensure oneness of purpose and consequently collective responsibility of the cabinet rarely exists.

**Pre-requisites of a Cabinet Government.** Cabinet government is the system to which most countries aspire. The whole system of this type of government is based upon the fact that the government is carried on in the name of the King or President by Ministers who are the members of the majority party in Parliament and are responsible to Parliament for all their public acts both individually and collectively. There are, however, certain pre-requisites without which Cabinet government easily turns into something quite different.

1. The first pre-requisite is the presence of a **titular** executive Head of the State. The Head of the State is not the directing and deciding factor responsible before the nation for the measures taken. The executive power of the government is exercised in his name by political men who belong to the majority party in Parliament. Legally, the government is vested in the Head of the State, the officers of the State are appointed in his name and dismissed by him. The Ministers are his Ministers and they remain in office during his pleasure. He summons, dissolves and prorogues Parliament. Laws made by Parliament cannot be enforced without his assent and if he wishes he may withhold his assent thereto. But all this remains in theory and the chief executive Head of the State does nothing by doing everything. Mr. Asquith, Prime Minister of Britain, wrote in 1913 a Memorandum on the rights and obligations of the King. He said, the King "is entitled and bound to give his ministers all relevant information which comes to him; to point out objections which seem to him valid against the course they advise; to suggest (if he thinks fit) an alternative policy. Such intimations are always received by ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter." Beyond this he must not go. In the oft-quoted phrase of Bagehot, the King has three rights—the right to be consulted, the right to encourage, the right to warn. "A king of great sense and sagacity," he adds, "would want no others." This is the classical exposition of the powers of the Head of the State in a Parliamentary or Cabinet system of government.

2. It is necessary that there must be a clear and stable majority in Parliament. Cabinet government means party government. Party, therefore, provides the machinery to secure a stable government under a uni-



fied command of the politically homogeneous and disciplined leaders. The fall of the Ministry is the fall of the party and the strength of the party in the legislature determines the solidarity and stability of the government. This is best achieved when there is a two-party system, one in office, the other in Opposition. But fairly good results can also be obtained when there are fairly solid blocs, each consisting of parties who habitually work together and who have enough in common to permit them to evolve a definite political programme. The classical example of a two-party system is Britain. Britain, in fact, hates a coalition government, because it contradicts the fundamental principle that cabinet represents a party united in principle. Britain's example has been admirably followed in the Dominion countries, although in Australia and New Zealand the anti-Labourite groups formed a partnership in order to defeat their Labourite opponents, which they did in 1949. In France and other Continental countries multiple-party system exists and coalition government is the only possibility there. The result is that the government is a combination of strange bed-fellows who have nothing in common; no leader to follow, no definite programme to pursue, and no discipline to observe. All this leads to a precarious tenure of the government. For example, during the twenty-three years from the end of the First World War to the French collapse in the Second War, France had forty-two governments, while Britain had eleven, averaging six months, and twenty-five months respectively. When the life of government is precarious and short, it is hesitant and unable to take a long view of policy. Its work is largely limited to matters of daily administration and its chief purpose is to remain in office instead of really governing. Moreover, when no party can definitely be made responsible because of coalition, the government can neither be responsive nor really representative. Irresponsible government coupled with incoherent public opinion is always a sectional government, which encourages corruption, jobbery, nepotism, toadying, and various other accompanying evils. The final result is the failure of the Parliamentary system of government as it has happened in France.

3. Two results flow from the two-party system as it operates in a Parliamentary government. One is the accepted leadership of the Prime Minister and the other is the principle of ministerial responsibility. Both are correlated and upon these two hinges the success of the Parliamentary or responsible government. The Cabinet is a team that plays the game of politics under the captaincy of the Prime Minister. He is the undisputed leader of the parliamentary majority party who brings unity and close association between ministers on the one hand, and the cabinet and the parliamentary majority on the other. This is the essence of ministerial responsibility.

4. The Ministers in a Parliamentary system of government are answerable to the legislature and they remain in office so long as they can individually and collectively retain its confidence. Each Minister directs the work of the Department over which he presides in accordance with the policy as determined and decided by the cabinet, and he is answerable and responsible to the legislature for its successful implementation. In addition to this individual responsibility, each Minister shares a collective responsibility with other members of the government, "for anything of high importance that is done in any other branch of public business besides

his own." On matters of high policy the Ministry presents a "common front" and they swim and sink together. The Ministry comes into office as a unit, remains in office as a unit, and goes out of office as a unit. Ministerial responsibility ensures cohesion and solidarity and accounts for the stability of the government. Moreover, responsibility and responsiveness go together and it is only in a Parliamentary system of government that both can be secured.

5. Another essential feature of a successful Cabinet government is a certain degree of moderation among political parties. Cabinet government is a democratic mechanism and democracy is inseparable from a belief in methods of peaceful persuasion, in the ultimate reasonableness of man, and his response to rational arguments. It is, accordingly, necessary that both the majority party and the Opposition should understand and observe the rules of the game. The public duty of the Opposition is to criticise and oppose the policy of the government, to attack upon the government and upon individual Minister. The majority party, on its end, must govern openly and honestly and it should meet criticism not by suppressing Opposition, but by rational argument. It means that there should prevail a sense of give and take; the habit of tolerance and compromise. When political parties become intolerant of one another and virulent in opposition and attacks, orderly government cannot exist. "Every trick, every method of obstruction and filibuster, is used to effect a certain political result, and if everything else fails, force may eventually be applied....when that occurs orderly government often comes to an end and emergency decree takes the place of legislative act. From there it is only a step to dictatorship."

6. Experience has shown that the right of dissolution is vital to the smooth working of a Parliamentary system. If judiciously used, it is the solution to any possible deadlock. If cabinet and Parliament disagree the electorate will decide between them. The appeal to the people, as the ultimate source of political authority, is the only logical manner of settling any serious dispute between rival agencies of the State. Lack of it means parliamentary absolutism. Being safe from dissolution and confident that its tenure goes by calendar, the legislature can overthrow cabinet with impunity. This is what happened in France in the Third and the Fourth Republics and it made infinitely worse the tendency towards cabinet instability already created by the multiple party system.

7. Finally, Cabinet is a secret body which is collectively responsible for its decisions. It must deliberate in secret if mature, rational and independent discussion is to shape the policy. Publicity reduces the independence of mind of Ministers in relation to each other and harmony of views becomes well-nigh impossible. When it becomes known that members of the Cabinet have differed amongst themselves the spontaneity of party support disappears, and gives a rude shock to the party solidarity. It also gives an opportunity to the Opposition to plague the government for their dissensions.

**Merits of Cabinet Government.** The Cabinet system of government is the only form so far devised in any representative democracy, which ensures harmonious co-operation between the Executive and Legislative branches of government. Ministers are the heads of the various adminis

trative departments, and, at the same time, they are members of the majority party in the legislature. In this capacity they lead the legislature and provide Parliament with the policy upon which decisions are to be made. There is no working at cross purposes between the executive and the legislative departments as may be found in the United States when the President belongs to one party and the majority in Congress to another. On the contrary, under a system of Cabinet government, "from first to last there is full and harmonious collaboration between the law-making and money-granting authorities, on the one hand, and the law-enforcing and money-spending authorities on the other." There are, thus, a few chances of conflict of authority and jurisdiction. "With authority thus concentrated, the full power of government can be promptly brought to bear upon any great emergency."

Bryce adds two more advantages of the presence of Ministers in a legislature: (1) being in constant touch with the Opposition as well as in still closer contact with the members of their own Party, the Ministers can feel the pulse of the Assembly and through it the pulse of the public opinion and can thereby obtain useful criticism, in a friendly way, of their measures. The members of the legislature can also call to the attention of the Government any grievance felt by their constituents and secure quick redress. (2) The system secures "Swiftess in decision and vigour in action, and enables the cabinet to press through such legislation as it thinks needed, and to conduct both domestic and foreign policy with the confidence that its majority will support it against the attacks of the opposition."

Cabinet government is the best specimen of representative democracy, for it recognizes the ultimate sovereignty of the people. Ministerial responsibility is, of course, immediately to the legislature, but no majority dare ride rough-shod over public opinion. The ultimate appeal rests with the people, and the government must remember those to whom it will have to account in the future. "Government with us," says Jennings, "is government by opinion, and that is the only kind of 'self-government' that is possible." The Government is ever under scrutiny and the system of Parliamentary government provides for daily and periodic assessment of what the rulers do.

Cabinet government is in the real sense a government by criticism. The majority party forms the government. The minority constitutes the Opposition. The Opposition must oppose and criticize the government. There is a saying in Britain that the Prime Minister knows the leader of the Opposition more than his wife. It explains how far the Ministry is alive to the opinion of the Opposition and apprehensive of its criticism. A government which neglects the Opposition does so at its peril. The lapses of the Government are its opportunities and the Opposition uses them to appeal to the public opinion. "The House is its platform, the newspapers are its microphones, and the people is its audience."

Another merit claimed for the Cabinet government is its flexibility and elasticity. Bagehot highly eulogised this aspect and pointed out that people can, under this system of government, "choose a ruler for the



occasion" who may be especially qualified to successfully pilot the ship of the State through a national crisis. Churchill replaced Chamberlain as Prime Minister, because national emergency demanded it and this change was brought about without any political upheaval in the country. But such a smooth change is not possible under a Presidential type of government. The office of the President goes by calendar. Come what may, Presidential elections must be held after every four years. "The American Government," says Bagehot, "calls itself a government of the supreme people; but at a quick crisis, the time when the sovereign power is most needed, you cannot find the supreme people...all the arrangements are for stated times. There is no elastic element; everything is rigid, specified and stated. Come what may, you quicken nothing and can retard nothing. You have bespoken your government in advance and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it."<sup>10</sup> This is one way of expressing the flexibility of the Parliamentary system of government. Another is the case with which it can meet the crisis in the social and political life of the people. The Executive can explain to and impress upon the legislature its appraisal of the situation and the methods proposed to tackle the emerging situation. Even well established customs may be waived temporarily, as in Britain it was done in 1931, when the Ministers "agreed to differ" as against the constitutional convention of collective responsibility, to meet the abnormal situations.

Moreover, Cabinet government can claim high educative value. It cannot function without well-organised political parties. The object of every political party is to win elections and capture government. To win elections means that the party should be in a position to secure the majority of votes and the electorate should approve its programme. It is like placing one's cards on the table and acquainting the nation with its political programme. It is for the people to judge one party or the other on its merits. If an issue of national importance arises subsequently, on which the verdict of the people had not been obtained by the party in power, the legislature may be dissolved and appeal made to the electorate. All this makes the people politically conscious. They are always vigilant of their rights and vigilance is the true price of democracy.

Finally, Cabinet government has succeeded in democratizing governmental machinery in all civilised countries, particularly where exists the institution of hereditary monarchy. If Britain is called the citadel of democracy it is because there is constitutional monarchy and the King does not actively govern. He reigns but does not rule. The latter is the function of his responsible Ministers. Bryce has beautifully explained this aspect of the Parliamentary system. He says, "As the actual working Executive has necessarily a party character, it is a merit of this system that the National Executive, be he King or President, should be outside party, and represent that permanent machinery of administration which goes on steadily irrespective of party changes....when a cabinet fails, the transfer of power to another is a comparatively short and single affair".<sup>11</sup>

10. *Op. cit.*, Chap. 2, Sec. 9.

11. Bryce, J., *Modern Democracies*, Vol. II, pp. 511-512.

**Defects of Cabinet Government.** In spite of the many practical advantages of the cabinet system some objections have been urged against it. It is maintained that the Cabinet system of government violates the theory of the Separation of Powers, and, as such, cannot commend itself. Combination of Executive and Legislative functions in the same set of individuals, it is argued, leads to tyranny. Sidgwick, while admitting the undeniable gain of harmony between these two chief organs of government, maintains that it is "to be purchased by serious drawbacks."<sup>12</sup> Ministers, he says, "are liable to be distracted from their executive duties by the work of preparing legislative measures and carrying them through Parliament while Parliament is tempted away from legislative problems by interesting questions of current administration in which, especially in foreign affairs, it is liable to interfere to an excessive extent."<sup>13</sup> The advantages of the division of government into different departments are, thus, "lost in the fusion or confusion of legislative and executive functions." This criticism, however, does not seem to be valid. Practical experience tells us that collaboration between the Executive and Legislative powers is essential to the well-being of the State. These departments cannot be divided into water-tight compartments. Theory of the Separation of Powers in its rigid form is inconceivable.

It is further pointed out that Cabinet government is unstable. The government has no fixed life. It remains in office only so long as it can retain parliamentary majority which is subject to the vagaries of the representatives, particularly "if dominant majority in the representatives chamber is either small or wanting in cohesion; and in the latter case it is also liable to be upset by a new combination of parties in the chamber—aided perhaps by personal intrigues—if the opportunity for the combination is skilfully chosen, so that the newly-formed majority is not reversed on an appeal to the country."<sup>14</sup> The uncertainty in the tenure of office, the critics of Cabinet government maintain, provides no incentive to the party in power to adopt a farsighted and consistent policy. A new Ministry which assumes office is sure to reverse the policy of the defeated Ministry, for it comes in with its own definite policy and programme. It may, however, be said that much of the above criticism is true only in countries with multiple political parties where the lease of the life of the cabinet is short and precarious. Countries like Great Britain, having dual party system, do not demonstrate such a state of affairs and dual party system is really the true basis of Parliamentary democracy.

It is sometimes deplored that the Cabinet system of government divides the country into a set of men who strive their utmost to get things done and another set who do their utmost to obstruct. The Opposition under the Cabinet government must oppose tooth and nail all measures sponsored by the government irrespective of their practical utility. Sometimes governmental policy is subjected to such a scathing criticism that it proves detrimental to national solidarity and prestige.

12. *The Elements of Politics*, p. 444.

13. *Ibid.*

14. *Ibid.*, p. 445.

When the Opposition indiscriminately opposes what the government may say or propose, it retards the progress of the country and, also, amounts to national wastage, both of money and time. The antagonism between the parties is not confined in the legislature alone. They keep the country in a spirit of commotion and turmoil. As Bryce puts it, "the system intensifies the spirit of party and keeps it always on the boil. Even if there are no important issues of policy before the nation there are always the offices to be fought for. One party holds them, the other desires them, and the conflict is unending, for immediately after a defeat the beaten party begins its campaign to dislodge the victors. It is like the incessant battle described as going on in the blood vessels between the red corpuscles and the invading microbes."<sup>15</sup>

But the fact is otherwise. The essential feature of a Parliamentary government is a certain degree of moderation among the political parties or what may be described as political forbearance. The minority agrees that the majority should govern and the majority agrees that the minority must criticise. The Opposition is the prospective government and it understands and observes the rules of game as the majority does. The government so arranges the parliamentary programme as to give due opportunity to the Opposition to discuss and criticise its actions. The government even becomes wiser by that criticism and arrives at a compromise. This is the essence of discussion and Parliamentary government is *par excellence* in this respect. The situation of ruthless opposition prevails only when extremist and anti-democratic forces gain a substantial membership in the legislature which they proceed to terrorise and ridicule. But this is not the way of Parliamentary system of government. "Whatever be the form of government," says Guérin, "a regime is democratic when the will to social co-operation of its members is stronger and more spontaneous than its anarchical impulses." Parliamentary government recognises and welcomes differences and it provides the machinery for its expression. But these differences must not go so far to make impossible the work of government. If such things are allowed to happen, it is the end of Parliamentary democracy.

Again, cabinet government is said to be inefficient because it is a government by amateurs. The headship of different Departments of the Executive is entrusted to persons who may not be familiar even with the rudiments of administration. "A youth must pass," says Sir Sidney Low, "an examination in Arithmetic before he can hold a second class clerkship in the Treasury; but a Chancellor of the Exchequer may be a middle-aged man of the world who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of those little first dots when confronted with Treasury accounts worked out in decimals."<sup>16</sup> Disraeli, while forming a Ministry, offered the Board of Trade to a man who wanted instead the Local Government Board. "It does not matter," said Disraeli, "I suppose you know as much about trade as—the first Lord of the Admiralty knows about ships." Dr. Baldev Prakash was the Finance Minister in the Punjab Government, but

15. Bryce, J., *Modern Democracies*, Vol. II, p. 512.

16. *Government of England*, pp. 201-202.



with everything to learn about public finance; for the whole of his life Dr. Prakash had belonged to the medical profession. The Prime Minister is not concerned in the choice of Ministers with their aptitudes and knowledge of the Departments they have to preside. His choice is seriously limited by political considerations, the foremost of which is preservation of stable parliamentary majority. Hence the amateur who obtains office is not always a gifted amateur, "weak men, incompetents, are sometimes appointed to office or to inappropriate departments, out of such consideration of popularity, sometimes gained or faded a decade or more ago, or through the personal esteem or friendship of the Prime Minister." And once in office, major part of their time is devoted in Parliament and cabinet meetings, social and other political activities and in nursing their constituencies. Nor does the brief and precarious tenure of their office leave any stimulus for them to learn the departmental technicalities. The result is, as the critics say, Cabinet government is a government by the inefficient who are mere tools in the hands of their permanent civil servants.

But this is not a correct appreciation of Parliamentary government. The essence of a Cabinet government is the responsibility of the Ministers to the legislature. It is, no doubt, always preferable to appoint a Minister who is well informed about the working of the Department over which he presides, but it does not mean that he should be an expert. The business of the Minister is not to do the work of the Department. He is only to see that it works properly and consistent with the declared policy of the government. In fact, there are many advantages if the head of the department is an amateur. A layman sees the department as a whole and his appraisal of the problems requiring solution is entirely different from that of an expert. "The cabinet", according to Ramsay MacDonald, "is the bridge linking up the people with the expert, joining principle to practice. Its function is to transform the message sent along sensory nerves. It does not keep the departments going; it keeps them going in certain direction."

Another serious difficulty of the Parliamentary system of government is the ever-growing size of the cabinet in every country. In fact, cabinets have grown everywhere too large for prompt and effective discussion and decision. The huge amount of work to be done by the Cabinet and the tremendous burden on each Minister—departmentally, parliamentarily, electorally, and socially—leave very little margin for serious thought on any subject beyond the immediate task. Then, participation in international conferences imposes on several Ministers, particularly on the Prime Minister, the Foreign Minister, and the Finance Minister, rather long occasional absences from current duties of administration at home. All taken together, the period of office of Ministers, as Dr. Finer observes, "is a period of practical work, not of reconsideration and survey." The obvious result is, as the critics point out, a deep and continued reliance on the administrative services. Bureaucracy under the circumstances, according to Ramsay Muir, "thrives under the cloak of ministerial responsibility." Whatever be the justification of the criticism, there is no denying the fact that the necessity of reducing the size of the cabinet is being felt in every country and in Britain it was reduced in 1947 to sixteen members only, and so was the size of

Churchill's Cabinet in 1951. Anthony Eden continued with the practice when he formed his government in May 1955 and Macmillan followed Eden after the latter's resignation. Amery suggests that no cabinet should exceed six to seven Ministers.

Cabinet system, its critics maintain, has degenerated into a party government in which political power is monopolised by the majority party. So long as parliamentary majority is assured it assumes dictatorial powers. The minority party is completely left out of active participation in the government and the nation is deprived of the talented persons who might be belonging to the minority party. Ramsay Muir is of the opinion that dictatorship of the cabinet in the last resort means the dictatorship of the Prime Minister who is the leader of the majority party. He says the Cabinet government is "a dictatorship of one man or of a small group of men exercised through a subservient party majority of more or less tried members." But it must not be forgotten that the Prime Minister's position is bound up with the party. His prestige, no doubt, is one of the elements that make for the success of the party. He is also responsible for party cohesion. But without his party the Prime Minister is nothing. Whatever he is and whatever he can claim to be is due to what the party has made him. Once the party disowns him, he meets the fate of Ramsay MacDonald. Within the cabinet he cannot do all what he wishes to do. He must listen to and respect the opinions of his colleagues. It is essential for the Prime Minister to retain the loyalties of his political friends who owe him a personal as well as party allegiance. Laski beautifully sums up the whole position when he says, "The parliamentary system is conducted on the vital hypothesis that no man is indispensable; and its daily operation is a constant and salutary reminder to the Prime Minister that his fortune depends upon the recognition of this truth."

Finally, Cabinet government is charged with lack of promptness in deciding and taking immediate action in times of national crisis or emergency. In emergency promptness and vigour of initiative are essential for success. But a cabinet consists of a large number of Ministers which need many minds to be consulted. A quick and decisive opinion cannot, accordingly, be secured. Moreover, a cabinet under a Parliamentary system with its divided responsibility, open discussions, and shifting majorities can hardly be expected to take prompt, united and vigorous decisions. These objections are also not borne by facts. The Second World War has fully demonstrated how cabinet governments withstood the test of time. In India, too, we have the cabinet governments both at the Centre and in the States. How successfully the Central and the State governments grappled with the refugee and other post-partition problems is a matter of contemporary history.

### PRESIDENTIAL GOVERNMENT

Nature of the Presidential system of government. Presidential government should be clearly distinguished from Cabinet government. Bagehot said, "The independence of the legislative and executive powers is the specific quality of Presidential Government just as fusion and combination is the principle of Cabinet Government." Both Cabinet and

Presidential governments are representative in their character, but responsibility of the executive to the legislature is the *sine qua non* of the former whereas the latter is constitutionally independent of the legislature. Under the Presidential system the Legislature and the Executive are two distinct departments of government. There is a more or less divorce between the two. The Executive is neither the creature of the Legislature, nor is it responsible to that body for their public acts and depends on it for remaining in office. The Chief Executive head of the State, the President, is the real executive both as a matter of law and in fact, and such power is the result of a direct grant from the constituent authority effected through express provisions of the constitution. The fact that the President is not merely the chief Executive but also the Executive makes all 'ministers' or 'cabinet members' his assistants and, thus, denies them the more independent positions of ministers in a Parliamentary government.

It is a misnomer to designate them ministers who constitute the Presidential cabinet. The members of the President's cabinet are not members of the Legislature and they do not belong to the Parliamentary majority. They have no access to the Legislature. They neither take part in its debates nor do they go there to initiate and pilot legislation or to defend the policy of government or stand in need of seeking its confidence. Nor have they any power to advise dissolution of the Legislature and appeal to the electorate, if the Legislature does not approve their policy. They have, indeed, no policy of their own. The policy of the government is that of the head of the State, who appoints them and retains them in office as long as it pleases him. They are responsible to him alone and to no one else. The cabinet under a Presidential system of government, in brief, is the tool of the head of the State. He can override the opinions of its members or he may not seek it or even if he does seek, it is for him to decide whether to consult them individually or collectively. And as for its members, "breath unmakes them as a breath has made."

The Chief Executive in a Presidential system of government, therefore, has a status independent of, and co-ordinate with, the Legislature, and it is not subject to the direction or control of the latter either for his continuance in office or in respect to the manner in which he exercises his powers. The duties of the Chief Executive and his administrative officers (members of the cabinet, by law named Secretaries in the United States) lie wholly in the executive and administrative field and that they have no responsibility in respect to the legislative functions, except as it may be their duty to make known to the legislature the need for the legislation in order that their executive and administrative functions may be more effectively performed.

To sum up, following are the chief characteristics of the Presidential form of government.

1. The Head of the State, who is called the President, is not merely the chief executive, but he is the executive. His powers are real both in law and fact.

2. The chief executive Head of the State is the elected representa-



tive of the people. His method of election and the term of office are provided for in the constitution. His powers are the direct grant from the constituent authority effected through express provisions of the constitution.

3. The office of the President goes by calendar. He cannot be removed from office except by impeachment for high crimes and misdemeanours.

4. The executive is not the creature of the legislature nor does it depend on its confidence for remaining in office.

5. The Chief Executive has, thus, a status independent of, and co-ordinate with, the legislative branch, and is not subject to direction and control of the latter either for his continuance in office or with regard to the exercise of his powers.

6. The fact that the President is the Executive makes all 'ministers' his subordinates. Under the Parliamentary government the ministers are always the most important leaders of the majority party or parties in the legislature, but under the Presidential system the powerful leaders, with the exception of the President, are usually in the legislature and sometimes elsewhere, but rarely in the 'cabinet'.

The 'ministers' are really the Secretaries of the President. They are appointed by him, are responsible to him, and remain in office so long as he wishes them to be. They are neither the Ministers nor do they constitute a Cabinet as it is popularly known. In fact, it is a misnomer to designate them as such. They can appropriately be called the President's family.

7. The duties of the Chief Executive and his ministers are executive and administrative only. They have no berth in the Legislature and nothing to do with legislation itself except to let the Legislature know imminent needs of the government in order to perform effectively its administrative functions. Law making is the exclusive concern of the members of the legislature.

8. The Legislature cannot be dissolved. It must run its own lease of life as prescribed in the constitution.

9. The Presidential system, thus, assumes separation between executive, legislative and judicial functions.

**Presidential Government in the United States.** The Presidential type of government started its career in the United States and is now confined to certain Republican forms of government which are exclusively in the Western Hemisphere, as well as three other countries, the Philippines, Southern Korea, and Liberia. Pakistan, too, had adopted this system of government and General Ayub was its great admirer. It is instructive to know the factors which contributed towards its emergence in the United States and the shape of the governmental machinery which it assumed. There were two factors which influenced the framers of the American Constitution against the cabinet form of government. In the first place, Montesquieu's theory of the Separation of Powers had a great appeal for the Americans. The theory of limited government, which is the natural corollary of the doctrine of popular sovereignty, had

convinced the authors of the Constitution of the necessity of separating the three branches of government as it prevented tyranny and absolutism. Liberty if it could last, they argued, then political direction of authority should not concentrate in any one of the branches of government. Secondly, they knew that Cabinet government could function only when the life of the nation was divided into distinct political parties, each with its separate programme and platform. Political parties, the framers of the Constitution believed, weakened national solidarity by creating sharp cleavages and the need of the time was unity out of the diversity of the new nation. They, accordingly, created an executive department independent of and co-ordinate with the legislative department; an "energetic yet dignified" Executive capable of enforcing national laws firmly and one which should lend a note of stability to the new government.

The Presidency of the United States is one of the greatest political offices of the world. Its occupant has become—with the exception of the Central European dictators—the most powerful head of a government known to our day. He is absolutely free, with respect to the exercise of his powers and tenure of office, except that all appointments made and treaties concluded by him are ratified by the Senate. As his term of office goes by calendar, his responsibility to the electorate is unenforceable. He can only be impeached by the Senate. His conviction by the Senate cannot carry a greater penalty than removal from office and disqualification to hold and enjoy any office of honour, trust, or profit in the United States.

In the exercise of his executive duties, the President is assisted by his Secretaries who are heads of different departments and are now ten in number. The Secretaries of the President are merely his personal assistants. They are appointed by him and are responsible to him. None of them is a member of Congress nor is he responsible to it. Though popular usage collectively gives to these departmental heads the name of cabinet, yet it is a misnomer to designate them as such. The President cannot shift his responsibility to this body or any officer of it. He cannot make them individually or collectively accountable to the legislature or the country for the policies and actions of the Federal Government over which he presides. Their responsibility is to the President alone. Cabinet in the United States is a mere creation of the President's will. It is an extra-statutory and extra-constitutional body. It exists only by custom and if the President desires to dispense with it, he can do so. The procedure, as it stands today, is that cabinet meets ordinarily once a week and the President submits to it questions upon which he thinks he needs their advice and the members bring to the cabinet such matters in their respective Departments as they deem appropriate for cabinet conference and general discussion. Votes are seldom taken as they are of no importance beyond securing a mere expression of opinion. And even if ever they are taken, they have no value. Cabinet members have no corporate rights as it is in Britain. This is well illustrated by two anecdotes, one relating to America and the other to Britain. "Seven nays, one aye, the ayes have it," announced President Lincoln following a cabinet consultation in which he found every member against him. This attitude is so often contrasted with Lord Melbourne's putting a

question on corn laws to the vote in the cabinet and saying, "it does not matter what we will say, as long as we all say the same thing." Cabinet, in the United States, has been aptly described as the President's family.

The executive in the United States has no initiative in legislation, except that the President may send messages from time to time to Congress recommending enactment of particular laws. It is true that Presidential messages are favourably received by Congress and greatly influence legislation, yet the executive in America lacks all initiative and guidance which is so conspicuous a feature of the Parliamentary government. Nor has the President the right to summon, except for extraordinary sessions, and dissolve Congress. Congress in the United States assembles *ipso facto* and its duration is fixed. No doubt, the President can veto laws passed by Congress, but it is only a suspensive veto. He may refuse assent to a bill passed by Congress within ten days after the bill has been submitted to him. If the bill so vetoed is again passed by a two-thirds majority of each House, the President has no option, but to give his assent to it and promulgate it forthwith.

According to Dr. Finer the American Presidency has six outstanding characteristics.<sup>17</sup>

"It is 'made executive' but it has grown;

"It is a 'solitary' not a 'collective' executive;

"It is popularly elected, in practice directly;

"It is more than an executive;

"It is separated from Congress;

"It may be tinkered with, but cannot be reformed."

**Merits of Presidential Government.** The chief merit of Presidential form of government is that without being responsible it retains a representative character. The President is an elected representative of the people, but his tenure does not depend upon the fluctuating will of the legislature. A fixed tenure of office accounts for a greater continuity of policy and firmness in administration, and it can be successfully carried out without any fear of break. The principle virtue of Presidential government, therefore, is the fact that it creates a stable Executive within the framework of a democratic order. This means promptness, vigour and initiative in administration. All executive authority is vested in one centre and the Head of the State is a executive as well as the executive. He is, in a word, the generalissimo of administration and, as such, there can be no question of divided policy. His Secretaries or 'ministers' follow the policy initiated by him.

Unity of control, quickness in decision, and concerted policy, which emergency of any kind may demand, can best be obtained in a Presidential system of government. The Head of the State is a chief foreign policy maker and a Commander-in-Chief of the armed forces of the country. As Commander-in-Chief, he may even take, in case of war, the command of military operations and effectively control matters of vital importance

17. Finer, H., *The Theory and Practice of Modern Government*, p. 669.



in domestic and foreign affairs, just as Woodrow Wilson and Franklin Roosevelt did in the United States in the two World Wars. What President Roosevelt did, during the economic crisis of the thirties of the present century, is a matter of contemporary history. All this is not possible under a Cabinet system of government. Even Winston Churchill, who attained new heights of power and authority, had not the personal powers of the President of the United States. To illustrate the difference in the position and powers of the President of the United States and the Prime Minister of Britain, Jennings writes that "the President pledged the United States in the realization of the objectives of the Atlantic Charter while the War Cabinet, not the Prime Minister, pledged the United Kingdom."<sup>18</sup> The President is also Head of the nation and not merely a party leader. This gives him greater dignity, prestige and authority. The nation looks to him to steer the country through any kind of national emergency.

The Presidential system also makes possible the appointment of experts to head the departments and without consideration of party affinities. The President may even appoint persons not belonging to his own party. Cleveland appointed Walter G. Gresham as Secretary of State and he had been thought of a Republican candidate for the Presidency. Theodore Roosevelt and Taft each appointed a Democrat Secretary of War and Hoover made a Democrat Attorney-General. Roosevelt's choice of Henry L. Stimson as Secretary of War and of Frank Knox as Secretary of Navy in 1940, both prominent Republicans, are two more notable examples. A Prime Minister in a Parliamentary system of government cannot normally do this. If the Cabinet is to work as a team it must consist of persons who think alike and belong to the same party. Again, a Prime Minister has a choice in electing his colleagues, yet the Party expects certain men to be in the Cabinet and the country, too, expects them to be there. Then, the allotment of various Departments to Ministers is a matter of political consideration and expediency rather than the aptitude for the work they are expected to perform. There is no political expediency which may weigh with the President and there is no party crisis of which he may be afraid of.

Since the President's Secretaries or 'Cabinet ministers' have no berth in the legislature the congressional load of work with them is negligible. Nor have they any constituency to nurse and to look forward to the day of election. They have, thus, the time and energy to devote themselves exclusively to the administrative work and pursue the policies of the government unaffected by political exigencies. There is another advantage too. Since the Executive is not responsible to Congress and its adverse vote does not bring a crisis in the government, the tumult of the party spirit is less in evidence. It is also claimed that due to the presence of the system of checks and balances there prevails a greater sense of stability and the administrative machine works more efficiently and effectively.

The advocates of Presidential form of government argue that such a system is best suited for countries inhabited by different communities with diverse interests. Homogeneous dual party system, which is so essen-

18. Jennings, I., *Cabinet Government*, p. 181.

tial for the success of a Cabinet government, cannot be secured under these conditions. Multiple party system is the general outcome when the people are divided both horizontally and vertically. But a government formed out of heterogeneous elements is a weak and unstable government. Under the Presidential system of government, it is a "solitary" executive. The President is the unmistakable focus of responsibility. Government either for its creation or for existence does not depend upon the complexion of the legislature. In the United States, however, two-party system is firmly rooted.

**Defects of Presidential Government.** The critics of the Presidential system are numerous and they urge that it divides government into water-tight compartments as it is based on Separation of Powers. In actual practice there can be no rigid division between the executive and legislative departments and to divide them into independent and co-ordinate departments is to create friction between them which is highly injurious to good and efficient government. By establishing the Presidential system of government, Dr. Finer says, the Fathers of the American Constitution "separated the executive sources of knowledge from the legislative centre of their application; severed their connection between those who ask for supplies and those who have the power to grant them; introduced the continuous possibility of contest between two legislative branches; created in each the necessity for separate leadership in their separate business; and made this leadership independent of the existence and functions of the executive." When powers are divided between the Executive and Legislative departments without any means of proper co-ordination, there is always inordinate delay to arrive at an agreement even on pressing matters which demand expeditious disposal. One branch of government may be operating on one policy whereas the other may be following quite a different one, particularly when the Executive belongs to one party and the Legislative majority to another.

Lack of direct initiative in legislation on the part of the Executive is really a very serious defect in the Presidential system of government. Legislation is the main function of the Executive and here the legislature does not act under its instructions. There can, accordingly, be no cohesiveness and the party ties, which bind the Executive and the Legislature, are too flimsy for an integrated policy. The result is that the legislative procedure is different essentially from the one in a country having a Parliamentary system of government; financial procedure is worlds apart; there is no co-ordination of political energy or responsibility; but each branch has its own derivation of authority and its morsel of responsibility. And in order to remove the possibilities of concentration of authority at one single end, a system of checks and balances may be introduced as in the American Constitution. The system of checks and balances is not only the negation of the theory of Separation of Powers, but it is also highly injurious to administrative efficiency. Somewhat ironically, Prof. Beard remarks, referring to the checks and balances in the United States, "designated to promote over-all equilibrium, often operate rather to

aggravate than to ameliorate the ill-effects of separation, as for example, in the case of the Presidential veto and senatorial assent to treaties."

Again, the Presidential form of government is characterised to be "autocratic, irresponsible and dangerous." Once the President has been elected the nation must continue with him whether they like and approve of his policy or not. He may become autocratic and even degenerate into a dictator, subject to the provisions of the constitution. The legislature has no constitutional power to withdraw the mandate which the electorate gave him at the time of election. This has been well explained by Bagehot. He says, "You have bespoken your government in advance and whether it suits you or not, whether it works well or ill, whether it is what you want or not by law you must keep it." Moreover, Presidential system of government is criticised for its rigidity, for the constitutional provisions must always be adhered to both in times of peace and war. During World War II Presidential elections in America were held twice whereas general elections were postponed in Britain by an Act of Parliament. In America there could not be any postponement without amending the Constitution which is a difficult and lengthy process. The rigidity of the constitution does not take cognisance of the needs of the hour. It must take its own course, though it may, at times, prove harmful to the interests of the nation.

Finally, the Presidential system has frequently been criticised for being unequal to the task of conducting a vigorous foreign policy. It is asserted that the President's dependence on the co-operation of frequently recalcitrant Congress makes United States' foreign policy a slow moving and uncertain affair. No one, including friends and foes, can guess about the degree to which Executive actions or commitments will be sustained or repudiated by Congress.

Bryce maintains that "the Parliamentary system has many advantages for countries of moderate size, the Presidential, constructed for safety rather than for promptitude in action, and not staking large issues on sudden decisions, is to be preferred for states of vast area and population such as are the United States and Germany". In the United States of America the Presidential system has worked vigorously well. Wherever basic unity was required in an exceptional crisis, statesmanship and patriotism has always provided it. By effective appeals to the voters through the spoken word, press, radio, and lately television, the Presidents have succeeded to dramatize their programmes and compel consideration of their views. But a system of government which cannot be generally and easily applied to ordinary conditions fails to command universal respect and approbation.

### BUREAUCRATIC GOVERNMENT

Bureaucracy represents that type of government the administration of which is entrusted to the permanent functionaries. They constitute the permanent civil service and are specially recruited to the services as a result of competitive examination or by nomination. They enjoy permanency of tenure and remain in office during good behaviour or till they retire on pension. Their promotion in service depends partly upon



seniority and partly upon merit. In such a system of government service is a profession and offers a career to those who enter it. Bureaucratic government is neither representative nor responsible and, accordingly, it is not responsive to public opinion. The most familiar example of bureaucratic government was the British Government in India before 1919.

**Merits of Bureaucracy.** Its chief merit is that the key posts are entrusted to the charge of officers who are men of high skill and ability and possess expert knowledge. They acquire special training in the art of government and observe a rigid code of traditions. Mill points out that bureaucracy "accumulates experience, acquires well-tryed and well-considered traditional maxims, and makes provisions for appropriate practical knowledge in those who have the actual conduct of affairs." It is, accordingly, more efficient than popular government. Usually, there develops among the administrative functionaries an *esprit de corps*, and a spirit of discipline similar to those found in a regular army. Bureaucracy, as such, represents an orderly administration entirely different from what is generally found in a democratic government.

**Demerits of Bureaucratic Government.** The chief defects of the bureaucratic government are centralisation of control and supervision, red-tapism, strong attachment to routine work, secrecy and undue safeguards for service. Such a government can neither be responsible nor responsive. Those who exercise authority are wedded to official customs and precedents without any regard to the needs of the people. They are conservative in their outlook and have neither the means to feel the pulse of the people nor an inclination to adjust their policy according to the popular demand. They are primarily concerned with form rather than with substance and according to Mill, "the disease which afflicts bureaucratic government and of which they die, is routine." Urgency has no place in bureaucracy. Every detail of administration must mechanically move through the rut of 'proper channel' till it reaches the head of the Department and decision is taken. Years pass before even trifling matters are finally disposed of. All this entails unnecessary waste of time and public money.

Bureaucracy may mean an efficient government, but efficiency is not the sole test of a good government. A good government always tries to stimulate in the people self-reliance, patriotism, loyalty, and interest in the government. It aims at political education of the citizens. The rulers consider themselves as trustees of the people and in their public actions they are guided and influenced by the needs and requirements of the people. Bureaucracy is a denial of all this and so we may conclude that whatever its merits, it is no substitute for self-government.

## DICTATORSHIP

**Dictatorship Old and New.** Dictatorship as a form of government is not new. It was a recognised institution in republican Rome where normally the authority of government was vested in two presidents called Consuls. In times of emergency the Romans used to appoint a Director to supersede the Consuls, granting him supreme powers to meet the crisis.

But Roman dictatorship was a temporary expedient to meet a crisis and discarded when the crisis was past. Moreover, the dictator was selected by a legal process with the obligation to submit his use of power to the scrutiny of the permanent authority.

This nature of dictatorship does not apply to the modern dictators of Russia, Italy, Germany and some other countries. Modern dictators are not selected by a legal process for a limited period of time in order to steer the State through a national emergency. They come into power as a result of *coup d'état*. Force is the criterion of their political authority and they remain in power as long as force can retain them. They are responsible to no other authority except to themselves. In fact, the whole authority of the State is vested in one individual person and he personifies the State. Some writers are of the opinion that the Russian dictatorship is the dictatorship of a party while in Germany and Italy it was the dictatorship of individuals. But Nazism and Fascism were also the rule of a party, though they remained all through overshadowed by a single personality just as Bolshevism was in the days of Lenin and Stalin. Till yesterday Khrushchev's personality loomed large on the political horizon. In fact, no government, as MacIver has shown, is ever actually in the hands of a single individual. If there is a single seemingly supreme ruler, he inevitably rests his power on the active support of an associated class. He rules in its interests no less than with its co-operation. He nearly always has a council of advisers who represent that class. Hitler and Mussolini were leaders of the Nazi and Fascist parties. They selected their ministers from the ranks of their own parties in order to pursue the ends of their respective parties. There is, accordingly, no difference between the Russian type of dictatorship and that of Central European countries. If there is any, it is only of degree rather than of kind.

**Rise of Modern Dictatorship.** World War I was claimed to be a fight of democracy against autocracy and it was fought to make the world safe for democracy. The Treaty of Versailles was also formed on broad democratic principles. It recognised the principle of self-determination of nations and built new States on the ruins of earlier monarchies. The defeated Germany presented to the world the best specimen of a parliamentary government through the Weimer Constitution. It was hoped that the new States as well as the old would gradually come round to parliamentary democracy. But surprising as it may seem, in close wake of the War, nearly three-quarters of the people of Europe found democratic government either destroyed or in danger of destruction. Italy came under the heels of Mussolini and his Fascist party in 1922, after his famous march on Rome. Primo di Rivero was declared the father of Spain in 1923. Weimer Constitution of 1918 was replaced by a dictatorship under Hitler and his Nazi party. In Poland the lingering shadow of parliamentary government was lost in 1929, when Pilsudski sent a body of soldiers into the lobby of the chamber to remind the representatives of their limitations. In Yugoslavia, King Alexander dismissed parliament and suspended the constitution. In Rumania, King Carol made a similar attempt at royal dictatorship in 1931. Besides these countries, Bulgaria, Portugal, Hungary, Austria and Turkey also came under the

sway of the dictators. In Greece, John Metaxes established himself in power on August 4, 1939, and began to regiment the life of the country on the pattern of Germany and Italy.

In all these countries it was a dictatorship of the Right. But in Russia it was a dictatorship of the Left. The former means the dictatorship of the capitalist and the latter is the dictatorship of the proletariat, which is a transitional phase between the destruction of the capitalist society and the emergence of the communistic society when the State "withers" away. Both these brands of dictatorships are fundamentally opposed to one another in their ideology, but they operate on roughly the same principles. Their common feature is that both rule by a single group and do not tolerate the existence of any other party. They begin with the community, not with the individual, and consider that the claims of the State, as representing the community, must always have precedence. They deny that the power of the State should be limited by appeal either to individual rights or to fundamental laws; law is the will of the State and there is nothing higher than the State. They deny that any part or aspect of human life can be outside the normal and continuous control of the State; the State is charged with authority over the whole, the totality of what goes within its territories—political, economic, religious, cultural. Government is identified with the State and it is not responsible to anything or anybody. The non-accountability of government is, in fact, one of the fundamental concepts of dictatorship. The dictatorship of all types has, therefore, in common the negation of the fundamental principles on which democracy rests.

**Causes of the rise of Dictatorship.** World War I had shaken people's faith in democracy. They had always thought that democracy and peace were synonymous, but the events of August, 1914, destroyed their illusion. After the War people had expected a better and happier world, but their hopes were also belied. When the war-weary soldiers returned home they found unemployment, budget deficits, new taxes to liquidate war debts, and a host of other problems facing them. They came to the conclusion that the parliamentarians were war-mongers who had safely sat away from the theatre of War in their comfortable homes and accumulated profits. Those who had actually fought the War and had sacrificed their kith and kin to win it, had to bear the brunt even after the War by torturing unemployment and crippling new taxes. They openly contended democracy had had its way, let us now pass on. The new States, created after the War on the principle of self-determination, did not provide a satisfactory climate for parliamentary institutions. None of them had a tradition for democracy. They had no popular training and democracy could not be retained there for long. Even in countries which had been considered the citadels of democracy, civil liberty was considerably curtailed and powers of the Executive strengthened during the period of War. This tendency endured after the War.

There were economic and financial problems of still more greater magnitude which haunted the world as a whole. The policy of economic self-sufficiency resorted to by the big and small States alike on the plea of nationalism created new peculiar conditions. As a matter of fact, the movement became "aggressive" national and free international trade was



impeded everywhere. Instead of international amity, distrust and suspicion ranged high and all the States became more nationally self-conscious. The slogan of greater Germany and repudiation of the Treaty of Versailles so enamoured the Germans that they fell in line with Hitler. Hunger for more land and to compensate herself from the losses suffered during the War prompted Italy to follow an aggressive policy under the leadership of Mussolini. The world economic depression and the wilful policy of the United States of America and France in sterilising gold with their Reserve Banks further deteriorated the world position. It required, under the circumstances, manning the resources of every country and a bid for more and new world markets. In every country special measures had to be taken to meet the two-fold emergency of post-war dislocation and economic depression.

The aggressive policy adopted by Japan and followed by Germany and Italy worsened the international situation. The League of Nations had lost its prestige. The disarmament conferences had failed. Instead of disarming themselves all countries speeded up militarization and equipment with modern methods of warfare. War preparedness on the part of bigger powers created international suspicions, particularly in the smaller States. Every nation required someone to save their national integrity, no matter at what cost. The States were, thus, faced with military dictatorships. Then, there was the bogey of Bolshevism. In reality Communism was made a scapegoat, for in "times of depression and distress it is perhaps natural that every nation should look round for a scapegoat, as it were, and should then make relentless war upon what it regards as the cause of the trouble, even though its diagnosis may quite easily be wrong."<sup>21</sup>

Two broad factors were, therefore, responsible for the rise of modern dictatorships. First, in countries where democracies had appeared, it had been a plant with no deep roots as it was alien to the soil. Conditions there were not favourable for the successful functioning of democracy. Secondly, in every case dictatorship was born of disillusion and despair; war and its spoils, breakdown of old traditions, apparent lack of decent alternatives and above all economic crisis. This coincided with the existence of a man or group of men with a definite and clear plan of action.

Some of the critics of democracy argued that dictatorship in some form or other was a necessary phase in the progress from monarchy to democracy. Historical examples were cited in support of this contention, for example, the rule of Cromwell in England and that of Napoleon in France. It was maintained that history of Germany and Italy showed the same sequence of events and before the establishment of true democratic systems of government in those countries they had to pass through the phase of dictatorships. But this argument cannot be applied to the conditions of Russia, for after the dictatorship of the proletariat, the State, in the words of Karl Marx, must "wither away". After capitalism is destroyed the State becomes unnecessary and gives place to a free society of voluntary associations.

**Features of Modern Dictatorship.** Modern dictatorship gave birth

to a totalitarian State as opposed to a democratic State. The Greek City-State was also totalitarian in the sense that the Greeks did not differentiate between the State and society. The State and society were practically synonymous for them and the Greek City-State was omniscient; it was the church, the school, and the State all combined. But the modern dictator's totalitarian State is not one like the Greek City-State. It is total government with autocracy extending its interest and control into every facet of the people's lives. The State is everything and the individual amounts to nothing.

Two important principles of modern dictatorship are: (1) to make a sharp distinction between rulers and subjects; and (2) to blur the distinction between government and the State. In order that his authority may not be challenged, the ruler not only monopolises the actual power, but denies to others the right to power. An effective means to this end is to obliterate the difference between government and the State. The ruler becomes the State; "L'état c'est moi" (I am the State) of Louis XIV. The State and for that matter government becomes omniscient. There is no sphere of life which the modern dictator's State will not cover. For Hitler and Mussolini there was nothing above the State, nothing beyond it, and nothing beside it. The State embraced all activities of the individuals and subordinated them to national ends. It was omniscient and infallible State. Mussolini's motto to the people of Italy was: "All within the State, none outside the State, none against the State." This was tantamount to the worship of the State and this worship of the State was cultivated in schools, at the playground, in clubs, associations and in fact everywhere. The life of every individual did not belong to him, but to the State and the State alone. Thus, "Narrow nationalism, chauvinism, aggressive warfare and imperialistic expansion are some of the essential features of Fascism and Nazism. Russian Communism is fast becoming nationalistic and militaristic, although it is not yet aggressively imperialistic, despite what she has done to Finland and the small Baltic States."<sup>22</sup>

When the nation is glorified the obvious result is war. Hitler and Mussolini openly preached war. Hitler extolled force and violence and he had all praise for the man of action. He believed in the power of the victorious sword. According to Mussolini, peace "is an act of cowardice in the face of sacrifice". Italy and Germany pursued a policy of colonial expansion for procuring raw materials for the sale of their manufactured goods and for the realisation of their will to power. Mussolini said, "Imperialism is the eternal and immutable law of life." Italy, he declared, "must expand or perish".

Dictatorship means one-man or one-party political rule. It is, therefore, the very antithesis of democracy. Democracy, according to the dictators and their apologists, is a decaying corpse, because it is "stupid, corrupt and slow-moving". Parliaments, it is maintained, are mere talking shops, "incapable of accomplishing results: at times of emergency they are absolutely helpless". Since modern dictatorship is one-man or one-party rule, it permits no political opposition and is hostile to individual

22. This refers to conditions before the World War II, Asirvatham, *op. cit.*, p. 312.

liberty. Individual liberty, according to Communism, is a **bourgeois** conception, and Fascism and Nazism, both, regarded it as a fetish of the past.<sup>23</sup> The individual, it is said, has no life apart from the State, and so he must be completely subordinated to it. The totalitarian State, thus, does not give to its subjects the right to speech, the right to press, the right to assembly and all those rights which characterise individual's life in a democratic State. The ideal of Nazism and Fascism was "one reich, one people, one leader". The Fascist oath read: "In the name of God and Italy, I swear to execute without discussion the orders of the Duce and to serve with all my strength and if necessary with my blood the cause of the Fascist revolution." Mussolini's motto to the youth organisation of Italy was: "To believe, to obey, to fight." Hitler put it: duty, discipline and sacrifice. This is regimentation of human life, pure and simple. The whole nation must think in one way, talk in one way, and act in one way. Free discussion and criticism of government are ruthlessly suppressed.

Again, the totalitarian State is exclusive. This means two things. In the first place, it advocates the purity of race, the purity of language and the purity of literature. According to the teachings of Nazism, "there are to be no more human beings in Germany, but only Germans". In the second place, the exclusiveness of the State means the policy of economic self-sufficiency. Finally, the totalitarian State is hostile to religion. Communism and religion are incompatible. Fascism and Nazism made religion a tool of the totalitarian State. Nazism enjoined on the people "to give unto Caesar that which belongs to God".<sup>24</sup>

All this can be reduced, according to late Dr. Beni Prasad, to four main features:

- (1) Modern dictatorship is the outcome, directly or indirectly, of militarism. The dictator stands forth as the saviour of the motherland against foreign invasion or intervention. "Round his banner gather the force of nationalistic self-respect, hopes and ambitions, the realisation of which seems to depend on concentration of power";
- (2) The dictator puts down internal discord with an iron hand. "He professes to function as the embodiment of national unity" and endeavours to weld the people into a harmonious whole;
- (3) Dictatorship represents a social doctrine, a plan of reform with whatever name you may label it. "Here it represents the principle of enlightened despotism, reinforced by the modern resources of technique and propaganda, and doubly liable to be entangled with a rigid creed."
- (4) The modern dictatorship has attempted to "improve the condition of the masses by providing order and security, better means of sanitation, communication and economic amelioration and... (even) education".<sup>25</sup>

**Merits of Dictatorship.** There has been widespread praise for dictatorships. They have been claimed as regimes of "strong men who get

23. *Ibid.*, p. 511.

24. *Ibid.*, p. 515.

25. *The Democratic Process*, pp. 241-242.



things done". There seems to be some justification in this claim. In majority of the European countries Parliaments and politicians miserably failed to solve the post-war problems. Their unsettled economic and political conditions and extreme economic distress demanded stable governments with vigour of will and action. But owing to the presence of multiple parties, divided and debased by their factiousness, they could not forge a united front. So the people were ready to yield to the authority of any power who could give them sufficient to eat and stable and efficient government respected at home and abroad. The dictators succeeded admirably in fostering national unity and established confidence in the people by demonstrating to them that they could act more promptly and vigorously and arrive at quicker decisions. Their firmness and determination stood in sharp contrast with the weak and vacillating policies of democratic rulers. When Hitler was asked about the programme of the Nazi party he replied that Germany had enough of programmes; she now needed action. Americans had praised particularly the Italian dictatorship, characterising it as a system which they intended "to run, to function, to do, to accomplish."<sup>26</sup>

The dictator has either no one to consult or the persons whom he consults are his own men who always dutifully submit to his will. He can, therefore, be quick and prompt in his decisions and consequently able to meet emergencies efficiently. The recent history of Russia, Germany, Italy, Turkey and Spain is the history of marvels which a determined dictator can bring about in the national life of his country. Let us take the achievements of the Spanish dictator Rivera as a typical example. Jackson, in his book, Europe Since the War, writes: "For the first time in their history the Spanish trains ran punctually. New railways were laid down, and a system of fine motor roads took the place of traditional mule tracks of Spain. The commerce and industry prospered under the dictator....Agriculture flourished.) Labour unrest was mitigated." Poverty and unemployment did no longer exist—indeed, a remarkable achievement when it is remembered that the dictators began their careers, at a time when the economic and political conditions of nearly all the Continental countries were in complete chaos. They began in an atmosphere of national revival, and placed the high ideals of patriotism, comradeship and sacrifice constantly before their countrymen, thus, infusing in them the virtue of service. A dictator can brush aside ruthlessly all elements of disorder and opposition in order to rehabilitate a nation's political, economic and social life.

**Demerits of Dictatorship.** Dictatorship may have given to the people well-feeding. But well-feeding is not the end of human life. To regiment human life and to subordinate it to the State is to dwarf intelligence and initiative. "At best a dictatorship is run as an elaborately organised house of correction, in which inmate is assigned his task and vigilantly inspected as to the manner in which he discharges it."<sup>27</sup> This is good enough for the delinquent and defective members of society, but not for normal men or men towering above others in character and

26. Refer to Coker, *op. cit.*, p. 488.

27. *Ibid.*, p. 490.

ability. A centralised and coercive direction of public life destroys the possibility of the development of human personality, learning, literature and art. According to Mussolini, the Fascist doctrine did not recognise the individual except "in so far his interests coincide with those of the State". Totalitarianism, therefore, "has meant the crushing of individual liberty and the suppression of human personality, violence at home and unashamed aggression abroad, the brutalising of human nature and the militarisation of a whole people". Moreover, the administrative efficiency, which dictatorship secures, is suicidal to the very spirit of the people. The dictator dictates and every one else is expected to do his duty. It is tantamount to killing the initiative and enterprise of the individual.

Force and fear are natural foundations of authority for those who regard national power and glory as ends in themselves. But indiscriminate use of force involves dangers. The lessons of history are, says Benedetto Croce, "that... regimes of force can survive only among decadent peoples; that they can figure only as temporary expedients in nations that are growing and in the ascendant; and that repressions only produce more violent explosions of the forces they would restrain".<sup>28</sup> What is created by force is destroyed by force. Force, therefore, is not the stabilising basis of the State. Consent of the governed is its real and enduring basis. As dictatorship does not derive its authority from the consenting people, the dictator can never be sure of his position. He adopts violence and coercive measures to suppress even the slightest opposition. "Such a policy spells disaster for the future, for to eliminate all differences is to eliminate all that keeps the community mentally and spiritually alive."

Glorification of the national power fosters international intimidation. The ideal of totalitarian State is a national State "well-ordered internally but aggressive, and bent on expansion". It is, accordingly, opposed to international amity and is, thus, the bankruptcy of human reason and intelligence. Can we, under the circumstances, regard dictatorship as a suitable alternative to democracy? Dictatorship, according to a modern writer, is a tyrant's paradise, "the totalitarian State is a prison and its subjects are closed in by walls, nonetheless real because they are invisible". The dictatorial rule and its methods are repugnant to the finer feelings of man and are disastrous to the promotion of higher values in life.

What a dictator needs is, first and foremost, loyalty. So he must be surrounded by the loyal, the steadfast, the reliable; not men who make difficulties but those who suggest expedients. To put it in simple language, only the second rate are wanted, and those only while they remain consistently acquiescent. The dictator who assumes responsibility for all major decisions, surrounding himself with mediocrities so as to be unrivalled and unopposed, must live under an appalling strain. "He is as subject as other people to illness and overwork. To normal ailments he must add the strain of public life and the fear of assassination. To relax for more than a short time would be to admit that others can govern as well

28. Asquith, *op. cit.*, p. 517.

29. Coker, *op. cit.*, p. 490.

as he—an impossible admission for one who claims to be unique. Even if he does not fall sick; he will grow old. As time goes on, inspiration will fail. Large-scale plan will have less attraction for a man who no longer expects to see them fulfilled. The dictator will begin to suspect that his decisions will be reversed as soon as he dies. Fatigue sets in and he is no longer able to decide instantly upon a policy. He is no longer the man he was. He sees this fact reflected in the faces of his staff. Are they (or is this imagination?) exchanging significant looks behind his back? Do they dare to think that he, the leader, is losing grip? This is the point at which dictatorship begins to suffer from the disease which earlier proved helpful. The legend, the myth begins to react on its inventor. No one dares to tell the leader what is actually happening. Sober facts he will regard as pessimism; and pessimism as disloyalty. So bad news comes to be increasingly hidden from him. Worse still, he comes to believe his own propaganda. The deceiver of others ends even by deceiving himself. He lives finally in a world of unreality, in a world of his own imagining. From then he can be regarded as practically insane." What a matter of fact analysis of the decay of dictatorship.

But whatever we may think of dictatorship ideally, it cannot be denied that it has proved an effective form of government. So far only war and defeat has brought it to an end; after eleven years in Germany and after twenty years in Italy. In Russia it is now more than fifty years old and in the construction of the socialist society stupendous and incredible results have been achieved.

**Present Day Dictatorship.** After World War II dictatorship did not become extinct. It appeared in new form in most of the countries in Asia and Africa which had become independent after the War. All these countries started their careers with democratic institutions, generally of Parliamentary type, but barring a few all of them have succumbed to some form or other of dictatorial rule. But Hitler lying dead and burning in his Berlin bunker and Mussolini's dead body strung upside down on a gibbet for the crowd's jeer had made the present dictators wiser. They had realized that autocracy in its naked form and the myth of leadership as preached by the totalitarians would no longer hold them in power for long. They tempered their autocracy with constitutional process. They justified their rise to power to inexorable circumstances and promised to bring about conditions for the restoration of democracy which the earlier regimes had corrupted and demoralised. The present day dictators, therefore, made democracy the umbrella to shelter their dictatorial rule.

General Naguib's *coup d'etat* in Egypt forced King Farouk to abdicate. Naguib was soon replaced by Colonel Nasser. He continued with his military dictatorship for some time to come. But when his authority was fully entrenched, he summoned a Constituent Assembly and entrusted it with the duty to formulate a republican constitution. Colonel Nasser was elected President under the new Constitution. Autocratic traditions, however, lingered on and they formed a conspicuous feature of the Constitution. In 1964, another Constitution came into



being with democratic traditions. Nasser is the President of the United Arab Republic.

In Pakistan General Ayub Khan with the help of Sir Sikander Mirza, President of the Republic of Pakistan, captured power in October 1958, by a military *coup d'etat*. The constitution was abrogated, Martial Law promulgated, and political parties banned. The constitutional machinery, thus, totally disappeared. Having fully saddled himself in power, Ayub forced Sikander Mirza to quit his office and was virtually banished from the country. In January 1960, Ayub Khan decreed setting up of local bodies elected through the scheme of controlled elections. In February these local bodies elected General Ayub Khan as the President of Pakistan. In 1961-62, the President devised the contrivance of "Basic Democracies", which in all its essentials was identical to his previous scheme of local bodies, except for the attractive name of 'democracy' and that too 'basic'. Through the process of restricted elections some 1,500,000 voters, out of Pakistan's total population of 100 million, elected nearabout 80,000 members of the "Basic Democracies." The "Basic Democrats" elected General Ayub as the President and conferred upon him the rank of Field Marshal. The "Basic Democrats" also elected the National Assembly as well as the Provincial Assemblies of East and West Pakistan.

Pakistan adopted a constitution of Presidential type in 1963, and elections thereunder were held by the end of 1964. Political Parties, which had been banned, immediately after Ayub Khan had come into power, were revived in 1963, with the Muslim League as the official party. Till March 1969 Field Marshal Ayub Khan remained the leader of the Muslim League Party and it functioned directly under his control. In the Presidential election of 1965, Ayub Khan was pitted against Miss Fatima Jinnah, and he won with a thumping majority. Mohammed Ayub Khushro, former Defence Minister of Pakistan, declared in a public speech on January 3, 1967, that "in the past Presidential election many injustices were done to the people".<sup>31</sup> He further said that the present representatives in Assemblies could not be called true representatives of the people. Within 48 hours of the expiry of Disqualification Restrictions on 70 politicians of Pakistan, a demand for adult franchise for National and Provincial Assemblies was made. Khan Abdul Qayum Khan, former Central Minister of Pakistan and chief of the Muslim League Party at the time of Martial Law in 1958, said in a press statement, "whether the country wants military system or a Parliamentary system, the question should be decided by a National Assembly elected on the basis of adult franchise."<sup>32</sup> Pakistan is now in turmoil. 1969 witnessed a great upheaval which undermined President Ayub Khan's prestige and authority, more particularly when the challenge came from a line-up of such eminently non-political figures as Air Marshal Asghar Khan, General Azam Khan and former Chief Justice Murshed. The demand for the restoration of Parliamentary democracy and stepping down of Ayub Khan from his office gained such a momentum in both the wings of Pakistan that on March 25, 1969,

31. *The Tribune*, Ambala Cantt., January 4, 1967.

32. *The Tribune*, Ambala Cantt., January 4, 1967.

President Ayub Khan declared Martial Law, abrogated the Constitution and appointed General Yahya Khan the Chief Martial Law Administrator. General Yahya Khan has now partially restored the 1962 Constitution and assumed the powers of the President.

President Soekarno of Indonesia introduced the myth of "guided" or "controlled" democracy. Immediately after assumption of power nineteen years ago, Soekarno dissolved the National Assembly. He constituted his Council of Ministers drawn from all political parties thereby giving it the complexion of a national government, but all the ministers were chosen at his will and they were responsible to the President alone. They represented no one except the President, expressed his will and executed his policies. Any direct or indirect opposition was crushed with a heavy hand. Soekarno was deprived of his power and authority as President in March 1967. In almost all the States which had become independent during the past decade or so, there are Party dictatorships with almost unrestricted powers within the framework of a democratic mechanism. Opposition has been ruthlessly suppressed in all these countries and in some of them, as in Ghana, parliamentary institutions have also been abrogated and even the powers of the judiciary considerably curtailed. The leaders heading the governments of all these countries are those who had led their countries and won for them independence. The justification for concentration of power and the reasons for suppressing the opposition are the same as advanced by the dictators in Egypt, Pakistan, Indonesia, Iraq and others. Exercise of such a power, they plead, is necessary to protect their countries from all possibilities of revolution, to maintain the independence and integrity of the State, and to accelerate the pace of prosperity of the people. Algeria also saw the military dictatorship brought about by the Chief of the Army Staff, Colonel Hourai Boumedienne. Algiers was a one-Party Dictatorship under President Ben Bella and Colonel Hourai Boumedienne was the greatest supporter of the President. Among the Afro-Asian countries, which became independent after World War II, only four States, Philippines, Malaysia, Ceylon and India, alone survive as democracies and have not so far succumbed to some form of dictatorial rule.

### SUGGESTED READINGS

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|-----------------|---|
| Anupchand Kapur | : <i>Two Constitutions.</i>                                       |
| Asirvatham, E.  | : <i>Political Theory</i> , Chap. XV.                             |
| Babbitt, I.     | : <i>Democracy and Leadership.</i>                                |
| Bagelhot, W.    | : <i>The English Constitution</i> , Chap. II.                     |
| Barker, E.      | : <i>Reflections on Government</i> , Chaps. VII-X.                |
| Beni Prasad     | : <i>The Democratic Process.</i>                                  |
| Birch, A.H.     | : <i>Representative and Responsible Government.</i>               |
| Brian Chapman   | : <i>British Government Observed.</i>                             |
| Brogan, D.W.    | : <i>The American Political System.</i>                           |
| Bryce, J.       | : <i>The American Commonwealth.</i>                               |
| Bryce, J.       | : <i>Modern Democracies</i> , Vol. I, Part II; Vol. II, Part III. |
| Cobban Alfred   | : <i>Dictatorship.</i>  |

- Finer, H. : *The Theory and Practice of Modern Government*, (1954), Chaps. XXIII, XXVI, pp. 90-94, 951-54.
- Ford, G.S. : *Dictatorship in the Modern World*.
- Finer, H. : *Mussolini's Italy*.
- Ford, H.J. : *Representative Government*, Chap. XI.
- Garner, J.W. : *Introduction to Political Science*, pp. 179-91, 197-200.
- Garner, J.W. : *Political Science and Government*, pp. 882-44, 423-38.
- Hoover, C.B. : *Dictatorship and Democracies*.
- Hitler, A. : *Mein Kampf*.
- Jennings, W.I. : *Cabinet Government*.
- Laski, H.J. : *Parliamentary Government in England*.
- Lowell, A.L. : *Government of England*, Vol. I, Chaps. II, III, XVII-XVIII.
- Mussolini, B. : *The Political and Social Doctrines of Socialism*.
- Parkinson, C.N. : *The Evolution of Political Thought*.
- Row, E.F. : *How States are Governed?*
- Sidgwick, H. : *Elements of Politics*, Chaps. XIX-XX.
- Wilson, W. : *Congressional Government*.



## Separation of Powers

**Distribution of governmental powers functionally.** In the preceding Chapter we said that two methods of distributing governmental powers may be employed—the territorial and the functional. These two are not alternative methods. The territorial division relates to the splitting up of the territory of the State into political divisions and the distribution of governmental powers among such divisions. Each of the political divisions is provided with a governmental organisation through which it performs its functions. But the work of government is so wide and complex that it is imperative to establish special organs for the performance of the several kinds of work to be done. This is necessary for two obvious reasons; first that the benefits of specialisation may be secured and, secondly, responsibility may be more definitely located. When the work of government is distributed to political organs in accordance with the nature of the function to be performed, it is the functional distribution of powers.

Based upon this principle of distribution, all the powers of government have long been conceived as falling within one or the other of three great classes, according as they have to do with (1) the enactment or making of laws, (2) the interpretation of these laws and (3) their enforcement. To these three classes have been given the names, Legislative, Judicial and Executive. Structurally considered, government has, thus, been deemed to be made up of three branches having for their functions the enactment, the adjudication, and the enforcement of law, and the branches to which these functions belong are known as the Legislature, the Judiciary, and the Executive respectively.

This three-fold division of governmental powers has received such general recognition that it has become a classical division. But recently it has been held by some writers that this division is unscientific. Willoughby, for example, says "that attempts to act upon it lead not only to confusion of thought but to serious difficulties in working out the practical problems of the distribution of governmental powers functionally".<sup>1</sup> He suggests that Electorate and Administration are distinct branches of government and it is important to recognise their distinct character in the practical work of organising and operating a government. Gladden, however, does not support this point of view and is of

1. Willoughby, W.W., *The Government of Modern States*, p. 217.

the opinion that administration "is subordinate to the main powers or branches of government". Gladden's opinion is convincing and we adhere to the three-fold division. Nor can there be a divorce between the Electorate and Legislative functions. Political sovereign and legal sovereign are the two aspects of the sovereignty of the State. The will of the electors is the controlling power behind the legal sovereign and it is to their mandate that the legal sovereign must ultimately bow.

**Theory of the Separation of Powers.** Political liberty, we have emphasised, is possible only when the government is restrained and limited. The theory that the functions of government should be differentiated, and that they should be performed by distinct organs consisting of different bodies of persons so that each department should be limited to its own sphere of action without encroaching upon the others, and that it should be independent within that sphere is called the theory of the Separation of Powers. Montesquieu, the celebrated French scholar, wrote in his famous book, *The Spirit of the Laws*, that "constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority until he is confronted with limits".<sup>2</sup> Montesquieu poses the question clearly enough. He asserts that concentrated power is dangerous and leads to despotism. But how to avoid concentration of power? His answer is simple. He says by separating the functions of the Executive, Legislative and Judicial Departments of government so that one may operate as a balance against another and, thus, power should be a check to power. *Le pouvoir arrete le pouvoir*; power halts power. (A constitution may be such that none "shall be compelled to do things to which he is not obliged by law, or not to do things which the law permits".) Montesquieu's thesis, therefore, is the division of powers by functions and the emerging theory therefrom is designated as that of the Separation of Powers. The exposition given by Montesquieu has now become classical.)

The idea contained in the theory of the Separation of Powers was not entirely unknown before Montesquieu. Its origin can be traced back to Aristotle, if not indeed to earlier writers. In the *Politics* is found an analysis of three "parts", or branches of government—the deliberative, executive, and judicial.<sup>3</sup> Aristotle did not go into details. He confined himself to a description of their personnel, organisation, and functions without suggesting their separation. Various political philosophers from Marsiglio of Padua in the fourteenth century gave some attention to the theory of Separation of Powers, but it meant little to Political Science until the issue of political liberty became urgent. In the seventeenth century it began to acquire meaning, and in the eighteenth, with critical times, it came to the forefront of discussion.

There are traces of the theory in John Locke's *Civil Government*. Locke distinguished between three powers that existed in every commonwealth. These he called Legislative, Executive and Federative, the Federative power related to the conduct of foreign affairs. The Executive and Federative powers, he pointed out, "are always almost united", and to

2. *Esprit des Lois*, Book XI, Chap. 4.

3. *Idem*.

4. Book IV, Chaps. 14-16.

this union he expressed no objection. But he would not permit the union of the Executive power to the Legislative. The Legislative power, he said, "in well-ordered commonwealth, where the good of the whole is so considered as it ought", is placed in the hands of an assembly that convenes at intervals. But since the administration and enforcement of law is a continuous task, a power distinct from the legislative must remain "always in being". In practice, "the legislative and executive powers come often to be separated". In principle, too, Locke argued that they should be separate, "because it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them".

**The Ideas of Montesquieu.** Here were the threads for Montesquieu to gather, elaborate and expand, and then to formulate them in concrete terms. Montesquieu lived in the time of Louis XIV, the author of the famous phrase, "I am the State". The monarch combined in his person all the three powers. His word was law and his authority was unquestionable. There was no liberty for the people under such an oppressive and despotic government. Montesquieu happened to visit England and was tremendously impressed by the spirit of freedom prevailing there. He tried to find out the causes of the liberty of the British people. He compared the independence of the judges and the strength of Parliament there with the subordination of the judiciary to the French Monarchy and the virtual extinction of the Estates-General. Not foreseeing the rise of the Cabinet system of government in Britain and keenly desiring to substitute political liberty for royal absolutism in France, Montesquieu advocated the separation of powers as a device to make government safe for the governed. The division of powers that he envisaged was the same as that of Locke. But in his insistence that they must be entrusted separately to different personnel he went considerably ahead of his predecessor. His most famous statement runs thus:

"When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, and execute them in tyrannical manner. Again, there is no liberty if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body...to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the cases of individuals."

To explain briefly and in simple language, Montesquieu endeavoured to establish that whoever has unrestrained power will abuse it. If the Legislative and Executive powers are combined in the same person or body of persons there can be no liberty, because the same agency becomes

5. (Second) *Treatise of Civil Government*, Chap. 12, Secs. 143-148.

6. *Spirit of the Laws*, Book VI, 6, ed. Franz Neumann, trans. Thomas Nugent (1949), pp. 151-152.



the maker and executor of laws. Similarly, if the Legislative and Judicial functions are combined the maker of laws is also their interpreter. If the Executive powers are combined with the Judicial, the same agency is the prosecutor as well as the judge. If all the three powers are concentrated in a single hand "there would be an end of everything", as there will be tyrannical laws interpreted and enforced with the violence of an oppressor. Montesquieu's thesis, therefore, is that concentration of Legislative, Executive and Judicial functions either in one single person or a body of persons results in abuse of authority and such an organisation is tyrannical. He, accordingly, pleaded that the three departments of government should be so organised that each should be entrusted to different personnel, and each department should perform distinct functions within the sphere of powers assigned to it.

There has been some controversy among students of Political Science whether Montesquieu contemplated an absolute or only a limited separation of three powers. One school is of the opinion that Montesquieu desired absolute separation so that each department remained independent and supreme within its own sphere. Others believe that he never thought to separate the powers completely. He rather suggested modification of the concentration of powers. "Montesquieu was searching for means," as Dr. Finer observes, "to limit the Crown; to make a constitution; to build canals through which, but not over which, power should stream; to create 'intermediary bodies'; to check and balance probable despotism and yet he did not wish to fly to the extreme of democracy." For Montesquieu the Executive convenes the Legislature, fixes its duration, and votes legislation. The Legislature has the right of impeachment. It may not arraign the chief of the State but, "as the person entrusted with the executive power cannot abuse it without bad counsellors, and such as have the laws as ministers, though the laws protect them as subjects, these men may be examined and punished". His idea of impeachment is akin to that of political responsibility of ministers in our times. Locke's analysis of the Government structure, too, proves that the various powers of government were not to be separated in watertight compartments. He made them dependent on each other—the legislatures depended on the supreme power of the people, the executive functioned in subordination to the legislature, and the judiciary worked as part and parcel of the executive.

[The essence of Montesquieu's theory of Separation of Powers is that it imposes on each organ of the government the obligation to explain itself that it acted within law and not beyond it. If the authority exercised is in excess of that permitted by law, it should be checked by the other in order to restrain its encroachments. And this is the correct meaning of *le pouvoir arrete le pouvoir*, power halts power. There must be a separation of powers within the structure of government in order that one power may operate as a balance against another power. Such a check Montesquieu considered necessary for safeguarding the liberty of the individual and for avoiding tyranny. Montesquieu, as such, follows

Locke, "but with more system", according to Dr. Finer, "and it is important to observe that he never thinks to separate the powers completely, but rather to modify the concentration of powers."

**Blackstone's view.** A similar view was expressed by Blackstone, the English jurist. In his *Commentaries on the Laws of England*, Blackstone said, "Whenever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty. The Magistrate may enact tyrannical laws and execute them in a tyrannical manner since he is possessed, in his quality of dispenser of Justice, with all the power which he as legislator thinks proper to give himself. . . . Where it (the judicial power) joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated by their opinions, and not by any fundamental principles of law which though legislators may depart from yet judges are bound to observe. Were it joined with the executive this union might be an over-balance of the legislative."

**Practical effect of Montesquieu's theory.** Montesquieu's theory of the Separation of Powers had a great democratic appeal and it soon became a political dogma. In fact, the teachings of Montesquieu gave a fillip to the French Revolution, and nearly all governments of the revolutionary period were organised on the principle of the Separation of Powers. The famous Declaration of Rights, issued after the Revolution, laid down that "every society in which the separation of powers is not determined has no constitution". The Constitution of 1791 made the executive and the legislature independent of each other, and the judges elective and independent. For a short span of time, during the regime of Napoleon, it was defied, but the doctrine was constantly in the minds of the people. As a constitutional maxim it is jealously cherished even today.

(In the United States, Montesquieu's theory found its best expression. "We shall never know," says Dr. Finer, "whether the Father of the American Constitution established the separation of powers from the influence of the theory, or to accomplish the immediately practical task of safeguarding liberty and property." They definitely desired liberty in the sense enunciated by Montesquieu. They also desired limits upon despotism. Independence from British suzerainty had given them the first. A short experience with legislative supremacy, after the Declaration of Philadelphia, had convinced them that concentration of power in any one institution was fraught with abuse. While writing about the Constitution of Virginia, Jefferson wrote: "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating of these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one.") The same point was elaborated by Madison while issuing a similar warning:

8. *Ibid.*, *op. cit.*, p. 98.

9. *Ibid.*, p. 99.

10. As quoted in Lipson's *Great Issues of Politics*, p. 277.

"The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.... They (the founders of our republics) seem never to have recollected the danger from legislative usurpations, which by assembling all power in the same hands, must lead to the same tyranny as it threatened by executive usurpations."<sup>11</sup>

(If concentration of power was the evil to be avoided, was there besides executive or legislative omnipotence some third possibility? The alternative was what has come to be called the Separation of Powers.) In fact, the Separation of Powers became a political creed with the statesmen and those engaged in the framing of the national Constitution at the Philadelphia Convention. They were not new to the theory. The governmental system of the colonial period embodied a species of separation of powers. Prior to 1776 the executive branch, under the Governor, was distinct from the legislative, and "controversies between them were rampant in the two decades that led up to the independence. With the principle of judicial review the statesmen of that day were equally familiar, since the constitutionality of Colonial Acts could be challenged before the Judicial Committee of the Privy Council. "History, therefore, joined hands with philosophy in writing a separation of powers into the federal constitution."<sup>12</sup> [The influence of Montesquieu was, indeed, powerful and decisive. Madison unequivocally maintained that Montesquieu was "the oracle who is always consulted and cited in the subject".<sup>13</sup> Whatever be the respective weights of influence in the Philadelphia Convention, the American Constitution, as Dr. Finer observes, was consciously and elaborately made an essay in the separation of powers and is today the most important polity in the world which operated upon that principle".<sup>14</sup>]

But the American Constitution did not explicitly state that powers ought to be separate. It simply distributed the powers: legislative powers were vested in Congress, the executive powers in the President, and the judicial in the Courts. While apportioning the lion's share of powers to one department of government the Constitution gave smaller slices to each of other departments. This was done to avoid concentration and consequent abuse of power. The maxim with the Fathers of the Constitution was that power should be limited, controlled and diffused. "If power is not to be abused then it is necessary, in the nature of things, that power be made a check to power." In the field of legislation, for example, the bulk of the law-making power was placed in Congress, but the President received his share in the powers to recommend measures, to summon Congress in special session, and to veto their bills. Similarly, the Senate shares with the President his power to make appointments, declare war, and ratify treaties. The Supreme Court by exercising the power of judicial review asserts its claim to a portion of the legislative function. Congress, too, acts in a judicial capacity in cases of impeach-

11. *The Federalist*, No. XLVII.

12. Lipson, L., *The Great Issue of Politics*, p. 280.

13. *The Federalist*, No. XLVII.

14. Finer, H., *The Theory and Practice of Modern Government*, p. 29.



ment where the House is empowered to prosecute and the Senate sits in judgment. The President can intervene in the business of the courts through his power of pardon for all offences except treason.)

(As portions of each function were distributed among different agencies the Separation of Powers was really intended to result in a system of checks and balances. The system of checks and balances has two obvious results. First, and ordinarily, unless the members of the three branches of government see eye to eye and cooperate harmoniously, none of the principal functions of government can be adequately performed. Second and conversely, if any department or pair of departments venture to exceed their constitutional authority they "could be restrained by the refusal of a third to connive". In this way, the Fathers of the Constitution destroyed the concert of leadership in government which is so prominent a feature of our times. Dr. Finer, thus, sums up the theory of Separation of Powers as it has worked in the United States. He says, "Legislative procedure has come to differ essentially from that in Britain and France; financial procedure is worlds apart; there is no co-ordination of political energy or responsibility; but each branch has its own derivation and its morsel of responsibility. All is designed to check the majority, and the end is achieved. At what cost?" The cost cannot be measured in terms of dollars. With powers divided between the executive and legislative departments without any means of proper co-ordination, there is always inordinate delay to arrive at an agreement even on pressing matters which demand expeditious disposal. One branch of government may be operating on one policy whereas the other may follow quite a different one, particularly, when the executive belongs to one party and the Congressional majority to another. Some Presidents have, no doubt, succeeded in bridging the gap separating them from the legislature. "But while an emergency may bring," says Zink, "temporary co-ordination and the use of patronage can usually be counted upon to pave the way to some action, the National government is still torn to parts by the provision which the framers made for separation of powers."<sup>15</sup>

*but from point of administrative efficiency - it is very healthy*

## EVALUATION OF THE THEORY

**The Theory re-stated.** Much has been said about the theory of the Separation of Powers. But what kind of Separation of Powers is needed? Here much of the clarity is obscured by the use of the ambiguous term "power". The government has certain functions to perform in order to serve the purpose of the State. If functions are taken as powers, then, the idea of service entirely disappears and the organs of government become invested with power. Wherever there is power there is force. A government having its foundation on power becomes an engine of force. The use of the term power, therefore, is most unhappy and inappropriate and the cause of so much confusion. The doctrine of Separation of Powers is itself a protest against power and its meaning can be better analysed, and appreciated if we drop the reference to 'powers' and substitute for it 'functions' of the organs or branches of government. "A

branch is an organisation of agencies with their personnel. The services they undertake are their functions."

Accepting this as the criterion of our distinction, the doctrine of Separation of Powers can be restated in the following manner: The activities of government group themselves into three divisions. These divisions are not a matter of theory, but it is a practical fact associated with the character of the functions themselves. It is one thing to legislate, another to administer, and a third to judge. By assigning each of these functions to different branches of government composed of separate personnel we obtain separation and, thus, transfer the doctrine from the realm of theory into the structure of political fact.

**Absolute separation impossible.** But it does not mean absolute separation. Separation of Powers, according to Barker, "must certainly mean a distinction of mode of action". Each organ of government has its own distinctive mode of action". The legislative mode is "deliberate and deliberative"; the judicial mode is critical rather than deliberative and the executive mode is a rapid determination of decisions and instructions in order to give effect to legislative and judicial modes. In a word, as Barker says, "we shall find three organs corresponding to the three different modes of action; but we may find one of the organs so absolutely specialised in its mode of action, or so entirely separate in its province, that it cannot also act in the mode and enter the province of others."<sup>16</sup> Madison correctly explained the doctrine of Separation of Powers when he said, "The powers properly belonging to one department ought not to be directly administered by either of the other departments. It is equally evident that neither of them ought to possess, directly or indirectly, an over-ruling influence over the other in the administration of their respective powers."

The State is an organic unity and the various departments of its machinery are inter-connected. By the nature of their functions, they cannot be divided into water-tight compartments. The government must always be viewed as a whole, and its organs, though distinct, must work in unison in order to be useful and effective in serving the purposes for which they have been created. The real problem, according to MacIver, "is so to articulate these, that responsibility shall not be divorced from efficiency". The functions of government are divided into different departments so that each department does its job to the best of its efficiency and with due regard to its responsibility. Efficiency demands expert knowledge of the problems which face a country and responsibility means the diversion of that knowledge towards those channels which are responsive to the needs of the people. This is the first principle of democracy. The Separation of Powers is, accordingly, needed for proper articulation and not for the division of organs of government into watertight compartments.

**No isolation.** There cannot, in fact, be any isolation and disharmony between the different departments of government. Isolation is not the essence of the doctrine and Montesquieu never suggested it. Each

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16. *Principles of Social and Political Theory*, p. 261.

department performs some functions which actually do not belong to it. The legislative department is not wholly and solely confined to the legislative mode of action, although it is primarily and mainly concerned with that mode. There is a judicial organ primarily and mainly concerned with the judicial mode of action, but not necessarily confined to that mode. There is, similarly, an executive organ which may be concerned with other modes of action besides the executive. A judge, for example, makes a new law when he gives a decision on a point not covered by law or in which there does not exist precedent. Here is a case in which the judicial and legislative functions combine as a result of natural process. Again, the executive everywhere possesses the power of issuing ordinances and proclamations. This is a device of practical utility, but it has to be admitted that ordinances and proclamations are a formidable substitute for legislation. The executive is a legislature in another sense too. It suggests and guides the process of law-making by the legislative organ. It does so under the American system of division of functions between the President and Congress; and it does so even more under Cabinet system such as the British and the Indian. The legislature, too, performs various executive functions. In a parliamentary government it creates the real executive, retains it in office and controls its functions. In the Presidential system, as obtainable in America, the Senate has a share in making appointments and ratifying treaties. Executive and legislative departments perform judicial functions too. The chief Executive head of the State everywhere possesses the power of pardon. House of Lords is the highest Court of Appeal in Britain. Senate in the United States acts as a court of impeachment.

**Historically false.** Montesquieu's doctrine of Separation of Powers in its traditional form is "almost as false historically as it became politically important". There is no Separation of Powers as Montesquieu understood in Britain. Perhaps, he could not visualise the implications of a Cabinet system of government. British government offered to him the guarantees of individual freedom so dear to Montesquieu. And he made it a model without knowing that one of the most essential features of the British Constitution was the close connection that obtained between the Legislature and the Executive. In fact, the Cabinet system of government is the very negation of the doctrine of Separation of Powers in its absolute form and the amazing feature of the British Constitution is that it allows the maximum liberty to the people. The doctrine of Separation of Powers in its traditional exposition may ensure liberty, but liberty does not consist in completely isolating the departments of government and rigidly demarcating their functions. This has never and nowhere happened. Nor was it the intention of Montesquieu. Real liberty depends upon the spirit of the people, their laws, and institutions.

*with Indian form*  
**All departments not co-ordinate.** (The theory of the Separation of Powers takes for granted that all departments of government are co-ordinate or equal. But this is not so.) With the growth of democracy the Executive has been reduced to a subordinate position. The Legislature is really the regulator of administration. By its control over the finances of the country, it limits and controls the Executive howsoever theoretically independent the Executive may be. In a Cabinet system of govern-



ment the subjection of the Executive to the Legislature at every step is an established fact. The Judiciary, too, is obviously subordinate to the Legislature, although its independence is the most coveted maxim of democracy, and, as such, of liberty.

It does not, however, mean that Legislature is not subject to any kind of check. The bounds of the sovereign legislature are many and various. In the first place, the Legislature is bound by moral and ethical codes. All proposals for law are considered on the touchstone of practical utility and moral considerations. No Parliament can pass laws which are against the facts of nature or are against the established codes of public or private morality. Secondly, the Legislature, like the whole of government, is limited both by the purpose it fulfils and the mode of action it follows. But the most important limit on the Legislature is the limit imposed by the development and activity of Political Parties. There is, what has been described, a parliamentary forbearance. The minority agrees that the majority should govern, and the majority agrees that the minority must criticise. And every possible opportunity is given to the minority to do so if democracy is to succeed.

**The Authoritarian Objection.** The authoritarian concept rejects the doctrine of separation from the beginning to the end. Separation of Powers aims at preventing despotism whereas dictatorships believe in unity and oneness of power and, accordingly, own despotism. One of the Nazi jurists wrote, "The separation of powers, belongs to a political era in which political unity was reduced to a minimum in the interest of an autonomous bourgeois society. However, national and ethnic unity and oneness demand that all political powers be gathered in the hand of one leader." In Soviet Russia, too, the plea is against separation. Vyshinsky writes, "...From top to bottom the Soviet social order is penetrated by the single general spirit of the oneness of authority of the toilers. The programme of the All-Union Communist Party rejects the bourgeois principle of separation of powers." Soviet writers argue that Montesquieu developed the theory as a means of limiting the absolute powers of the King of France. In Soviet Union there is no class conflict and hence there is no need to limit one branch of government by another. All organs of government have to work in the same interest.

**The Democratic Objection.** There is even democratic objection to the doctrine of the Separation of Powers. (Montesquieu's views were the product of an era which looked upon government itself as something inherently dangerous and possibly despotic. That government was deemed best which governed least) as it existed to protect and restrain, not to foster and promote. (But, today, even the most conservative person is unable to think of government in purely passive terms. The intensive integration and complexity of modern industrial society, and the concept of the Welfare State demand more and more of action and services from government. It necessitates, in brief, planning the life and resources of the nation. This is a universal development which has no exception in any State in the world.

The concept of Welfare State is characterised by an increasing concentration of power on the Executive level and consequently it implies the ascendancy of the Executive over the Legislative branch. Locke had

conceived of the relation between the three powers in terms of legislative supremacy. Montesquieu and Madison preferred to see an equilibrium between the three co-ordinate branches. But such a division now is considered outmoded and incapable of guaranteeing the services which the government is expected to render. It is held that planning and active service cannot be the work of separate branches of government which cancel each other out. Planning must be unified.- Fusion and not separation of functions is, therefore, required. Thus, "moulds are broken in which the thoughts of Locke, Montesquieu and Madison were cast and their contents have spilled together".

The ascendancy of the Executive and the blurring of the traditional division of functions have been influenced by two other important tendencies. One is the organisation of the career Civil Service and, second, is the emergence of the Political Parties with their nationwide organisations. Political Parties unite what one may try to separate. The development of Executive, therefore, into what may be called a multi-functioning organ, is one of the most notable features of modern government. To put it in the words of Barker, "If the growth of the legislative organ, in consequence of the development of the cabinet system, was the notable feature of the eighteenth century, it may be said that the growth of the executive organ in consequence of the extension of rights and the corresponding extension of services which mostly fall to the lot of the executive, is the notable feature of the twentieth."<sup>17</sup> Today, the Executive is not only an Executive, it is also, at the same time, a Legislature; it exercises a judicial jurisdiction too. Administration and adjudication no longer seem as different as they had once appeared.<sup>18</sup>)

**Conclusion.** Even if the traditional theory may be accepted as relevant to the present context, still no department of government can remain independent of the other. John Stuart Mill has correctly said that complete independence would inevitably mean frequent deadlocks, because "each department acting in defence of its own powers would never lend its aid to the other and the consequent loss in efficiency would outweigh all the possible advantages arising from independence."<sup>19</sup> It is, indeed, scarcely possible to make such a clear-cut distinction between the three organs and their functions. Blackstone had realised all this and while defending the separation of the departments of government, he declared that their "total disjunction" would in the end produce the same tyrannical effects as their complete union in the same hands. The fact of the matter is that the doctrine of the Separation of Powers has never been construed to mean that there is no affinity between Legislative, Executive and Judicial departments. Nor was it Montesquieu's intention to give such a theory. He had in his mind a longing for liberty against the autocratic powers of kings and princes. England presented to him a

17. *Principles of Social and Political Theory*, op. citd., p. 261.

18. Refer to the independent regulatory commissions such as the Interstate Commerce Commission in the United States of which Justice Holmes said that it performed "legislative, judicial and executive acts only softened by a quasi." Also refer to administrative justice in Britain and other countries.

19. *Representative Government*.

sharp contrast with the conditions prevailing in his own country. Without forming a real idea of the working of a democratic government he concluded that liberty can be secured only by a mechanical check of one department over the other. For him this was above all else a practical recipe for political liberty.

But Montesquieu wrote at a time when institutional checks appeared to be the only feasible ones. Today, it is not so. The particular system of checks and balances between the Legislative, Executive, and Judicial branches, which is the core of the system, is by no means the only way in which the separation of powers may be applied. There is always a moral and ethical code which insists that uncontrolled power is despotic power and it urges that power be distributed in various agencies in order that they may check and balance each other. For example, in Britain, a country which is often cited as an example to defy Montesquieu's theory of Separation of Powers, there are actually checking and balancing factors: there is an independent judiciary, and there is above all the system of two major Political Parties, succeeding each other at fairly regular intervals and thereby checking one another. The two-party system in a Parliamentary democracy, thus, provides leadership and checks which help to keep the system efficient and free.

The core of the modern problem of government is to find a synthesis combining the answer to two needs—the need for the Welfare State and the need for freedom. The Welfare State, as said before, means concentration of power on the executive level and, accordingly, the ascendancy of the Executive over the Legislative branch. This <sup>Executive</sup> tendency seems to be an alarming development to many. It is, undoubtedly, alarming unless controlling and balancing devices are properly developed to keep pace with the ever-changing face of the executive power. The doctrine of Separation of Powers has, therefore, become more important today than perhaps at any other time.)

One of the checks is the system of judicial review. Montesquieu himself was particularly interested in the judicial power as check of and arbiter between the other two branches. This concept is more clearly realized in the United States, India and some Commonwealth countries. The idea of an independent and coequal judicial branch has spread to Germany (Bonn) and Austria. In France and Italy the supreme administrative court, the Council of the States in the former, applies most effective check on the executive power, although it is nominally a part thereof.

The balance between Executive and Legislative branches is a legal question primarily in countries under the Presidential system of government. There the Constitution prescribes the rights of both as well as their limitations. But under a Parliamentary system their relationship is determined by political considerations. The principal check is, as we have mentioned before, the existence of Political Parties, two main parties or two blocs.

Barker suggests another check. He accepts the bare truth of our times that the executive is a multi-functioning organ, but he emphasises that when the executive performs legislative and judicial functions let it employ the mode of action relevant to that department. For example, if



the Executive exercises judicial functions let it adopt the proper and peculiar mode of judicial action, i.e., it must accept the procedure of public hearing, summoning witnesses and recording of evidence according to the regular rules of evidence. It must publish its decisions and it must also admit, if it possibly can, the possibility of appeal.

(The need is, therefore, for union as well as separation.) Democratic government demands that (a synthesis be found <sup>must therefore</sup> between the separation of powers, and the possibility of concerted governmental action. The first is obtained by continuing with the separate organs of government. It is intrinsically good to do so, for it sets a limit of jurisdiction over the functions of each organ. Each organ thereby establishes its own distinctive mode of action with its own distinctive technique. But it does not mean that separation of functions prevents leadership. Too much separation destroys responsibility, immobilises action and ultimately destroys free government. Without leadership there would soon be a constitutional crisis and possibilities of the rise of dictatorship. But it is essential to temper leadership by imposing limitations upon it.) The real limitations are those which make the government responsible to the people, that is, it must answer to the people for its policies and if its answers are not satisfactory to the people, they should have the means to replace it. It can be ensured only by the presence of an independent and impartial judiciary, the guardian of the rights of the people. (Thus, the Separation of Powers is a living force in all democratic countries as a check to irresponsible power.)

### SUGGESTED READINGS

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|--|---|
| Black, H.C.                              | : <i>The Relation of the Executive Power to Legislation.</i>            |
| Barker, E.                               | : <i>Principles of Social and Political Theory</i> , pp. 255-68.        |
| Fairlie, J.A.                            | : <i>The Separation of Powers.</i>                                      |
| Finer, H.                                | : <i>The Theory and Practice of Modern Government</i> , Chaps. VI, VII. |
| Garner, J.W.                             | : <i>Political Science and Government</i> , pp. 322-344, 423-428.       |
| Garner, J.W.                             | : <i>Introduction to Political Science</i> , Chap. XIII.                |
| Hamilton, A. and Jay, J. and Madison, J. | : <i>The Federalist</i> , Everyman's Library, Dent.                     |
| Lipson, L.                               | : <i>The Great Issues of Politics</i> , Chap. XI.                       |
| MacIver, R.M.                            | : <i>The Modern State.</i>  |
| Montesquieu, C.                          | : <i>Spirit of the Laws.</i>  |
| Sidgwick, H.                             | : <i>Elements of Politics</i> , Chap. XIX-XX.                           |
| Webb, Sidney and Beatrice                | : <i>A Constitution of the Socialist Commonwealth of Great Britain.</i> |

## The Constitution of the State

**Meaning and definition of Constitution.** Every State needs some kind of order, some system by which a reasonably orderly process of government may emerge. Without such an order there is anarchy. This order or Constitution must lay down certain rules which define the organs of government and how they originate, their mutual relationships, and the relationship between the government and people over whom its authority is exercised. A constitution is, therefore, the basic design of the structure and powers of the State and the rights and duties of its citizens. There can be no State without a constitution. Sometimes the constitution of a State is definitely formulated in a document or documents; sometimes it is found in an established body of rules, maxims, traditions and practices in accordance with which its government is organised and its powers are exercised.

The constitution need not be written. Nor written constitution represents the actual structure of the country and of its political institutions. Custom plays a considerable and often a preponderant role. "The attempt to embody the fundamental institutions of a State in a single document or small groups of documents," says Lowell, "is rarely, if ever, successful; and even if the constitution when framed covers all the main principles on which the government is based, it often happens that they become modified in practice, or that other principles arise, so that the constitution no longer corresponds fully with the actual government of the country."<sup>1</sup> What the constitution establishes is some sort of legal order which is enforced and which keeps the parts of the State together. Woolsey says that a constitution is the "collection of the principles according to which the powers of government and the rights of the governed and the relationship between the two are adjusted". Bryce defines it as "the aggregate of laws and customs under which the life of the State goes on"; "or the complex totality of laws embodying the principles and rules whereby the community is organised, governed, and held together".<sup>2</sup> Dr. Finer says, "The State is a human grouping in which rules a certain power relationship between its individuals and associated constituents. This power relationship is embodied in political institutions. The system of fundamental political institutions is the constitution."<sup>3</sup> Dr.

1. Lowell, A.L., *The Government of England*, Vol. I, p. 1.
2. Bryce, J., *Studies in Jurisprudence*, Vol. I, pp. 136 and 217.
3. Finer, H., *The Theory and Practice of Modern Government*, p. 116.

Wheare defines it as "that body of rules which regulates the ends for which and the organs through which governmental power is exercised".<sup>4</sup> Gilchrist writes that the Constitution consists of "that body of rules or laws written or unwritten, which determine the organisation of government, the distribution of powers to the various organs of government, and the general principles on which these powers are to be exercised."<sup>5</sup>

All these definitions differ from one another in some way. But when we analyse them one point becomes clear that the province of the constitution is government, not the State as a whole. It deals with the fundamental concerns of government and as there are different kinds of government, there are different kinds of constitutions. But every State, no matter what form of government it has, must have a constitution. It is impossible to contend, as some writers do, that the State with an autocratic government exists without a constitution or that the frame of government is not a constitution unless "the community hath agreed to it", or unless it guarantees "rights" and "privileges" to the people. If the State with a democratic government has a constitution, so has the State with an autocratic government. There can be no State without a constitution, and every State that ever existed has had a constitution of some kind.

### CLASSIFICATION OF CONSTITUTIONS

**Evolved and Enacted Constitutions.** While possessing a common characteristic in content, constitutions differ greatly in type. Some writers classify them into **cumulative** or **evolved** and **conventional** or **enacted**. A **cumulative** or **evolved** constitution is the result of slowly working evolutionary changes; the product of accumulated material which has moulded and shaped the political institutions of a country. Such a constitution is not made, it grows with the roots in the primitive past. The edifice it presents is the accumulated wisdom of the past and the result of numerous customs, usages, traditions, principles, judicial decisions which have influenced its development. The **conventional** or **enacted** constitution, on the other hand, is the result of deliberate efforts of man. It is consciously made and either may be the outcome of the deliberations of the Constituent Assembly specially convened for that purpose, or it may have been promulgated by the command of the sovereign authority, King or Parliament. The prescriptions of an enacted constitution are embodied in a document or a series of documents.

Constitutions are now divided, for brevity and definiteness, into **written** and **unwritten**, although the distinction between them is more or less the same as is between evolved and enacted constitutions.

**Unwritten Constitution.** Down to a century and a half ago, constitutions differed little from each other in form. The prevailing type was unwritten and flexible and what survives today, by way of exception, in Britain represents an earlier norm. An unwritten constitution is one which reflects the evolutionary or Darwinian conception which reflects

4. Wheare, K.C., *The Statute of Westminster*, p. 12.

5. Gilchrist, R.N. *Principles of Political Science*, p. 211.



the complex nature of institutions, their gradual development, and unpredictable change. Referring to the Constitution of Britain, Jennings says, "If the constitution consists of institutions and not of the paper that describes them, the British Constitution has not been made but has grown—and there is no paper."<sup>6</sup> The institutions necessary for carrying out the functions of government emerged as the need arose. "Formed to meet immediate requirements they were then adapted to exercise more extensive and sometimes different functions. From time to time political and economic circumstances have called for reforms. There has been a constant process of invention, reform and amended distribution of powers. The building has been constantly added to, patched, and partially reconstructed so that it has been renewed from century to century; but it has never been razed to the ground and rebuilt on new foundations."

An unwritten constitution is, accordingly, the child of wisdom and chance; the product of history and the example of Sir James MacIntosh's dictum that constitutions grow instead of being made. It is the result of a process in which many elements, like statutes, judicial decisions, precedents, usages and traditions have entered piling themselves one upon the other from age to age and shaping the political institutions of the country according to the wants of the people and needs of various times. There is no single document or documents which contain it, though many sources may be found which describe it. There may be some enactments of a fundamental character which make the constitution, but this kind of written element is in a much smaller proportion than the unwritten element, and it does not, at the same time, bear one single date. These laws were made as and when they were needed. The most important part of an unwritten constitution is just what is kept out of the written law and given over to the sole guardianship of custom.

The best and the only example of an unwritten constitution, as said before, is that of Britain. The fundamental political institutions of the country, which are the basis of all governmental authority, are not set down in writing in any formally accepted document or documents. They are regulated by: (1) judicial decisions; sometimes founded on more or less vague "immemorial rights and liberties", and sometimes founded on agreements, resolutions and laws made by rebellious Parliaments. Then, (2) there are a number of statutes dealing with separate parts of government like the Act of Settlement, the Franchise Acts, the Parliament Act of 1911 as amended in 1949, and the Crown Proceedings Act of 1947. (3) But the major part of what forms the soul of the British Constitution is regulated by simple customs or conventions. Britain is something more than the "mother of parliaments", and its growth was more or less spontaneous, slow and sometimes haphazard. It took eight centuries to transform Parliament into a governing body resting on the suffrage of all adult persons in the country and the process has only been completed in our own times. The Glorious Revolution of 1688, settled once for all that Parliament had supreme power and it could control every aspect of national life. The powers of the King were limited and the constitutional result was the emergence of the cabinet. Conventions

6. Jennings, I., *The Law and the Constitution*, p. 8.

7. *Ibid.*

alone provide for the essential rules of Cabinet government. They demand that Ministers of the King must be members of Parliament, they should belong to the majority party in the House of Commons and function under the party leader, the Prime Minister. Convention further demands that the Cabinet is responsible to Parliament for all its acts and it remains in office so long as it retains the confidence of the House of Commons. That Parliament meets annually and that it consists of two Houses rest on custom. Then, there are many conventions regulating parliamentary procedure. The principle that no peer other than a Law Lord sits when the House of Lords is acting as a court of appeal is also customary. It will, thus, be clear that so firmly is the mechanism of government erected on the foundation of conventions that without them the constitution becomes maimed if not absolutely unworkable.

It does not, however, mean that the written element in the British Constitution is negligible. Judicial decisions form a body of written constitutional law and the statutes certainly do. The utterances of Parliament on various supreme occasions list in the constitutional documents of the country and are, thus, "authentically existent". These, taken together, are, Dr. Finer says, as explicit and usually more explicit than the "written constitutions" of other countries.<sup>8</sup> The conventions, he adds, are not so recorded by an institution with such authority as the courts of law or Parliament. "Nevertheless, they are understood with fair exactness, and have been recorded by ministers in their correspondence and political speeches, accepted with inappreciable dissent by politicians and scholars, and even written down in great detail by such authorities as Hearn, Bagehot, Dicey, May, Anson and Jennings".

Finer, accordingly, poses the question: where is the difference between the unwritten Constitution of Britain and the written Constitutions of other countries? He says that the difference is two-fold. First, the major part of the British Constitution consists of conventions "which are taken for granted but not formulated, save occasionally by individuals. Second, and more important, is that no body of people was deliberately called together and entrusted with the establishment of a constitution; as in other countries".<sup>9</sup>

**Written Constitution.** This makes easy the meaning of a written constitution. A written constitution is a consciously planned system, a constitution formulated and adopted by a deliberate creation, a Constituent Assembly or a Convention. The Constitution of India was formulated and adopted by the Constituent Assembly of India. The Preamble of the Constitution begins with the words, "We the people of India having solemnly resolved to constitute India into a Sovereign Democratic Republic" and ends with the words, "In our Constituent Assembly this twenty-sixth day of November 1949, do hereby adopt, enact and give to ourselves this Constitution." The Constitution of the United States was drafted by a special Convention of delegates, presided over by George Washington and it met on May 14, 1787, in the Independence Hall at Philadelphia. The Constitution, as it emerged out of the Philadelphia Convention

8. Finer, H., *The Theory and Practice of Government*, p. 118.

9. *Ibid.*, p. 119.

on September 17, 1787, was referred to the States for their ratification. The Preamble announces unequivocally that "we the people...do ordain and establish this Constitution".

A written constitution is, thus, a deliberate design of the institutions that it creates whereby government is conducted. And all this is contained in a document generally bearing one single date. There are some examples of written constitutions contained in a series of documents bearing different dates. The French Constitution under the Third Republic was fragmentary and did not consist of one single document. It was composed of three constitutional laws passed on February 24, February 26 and July 26, 1875.

A written constitution is distinct in character and is held in special sanctity. It is the supremacy of the constitution. It means nothing may be done or enacted which conflicts with the provisions of the constitution, and that the constitution must be amended or altered according to the procedure prescribed by the constitution. Here is a clear distinction between the constitutional or fundamental law and statutory law. The constitutional law embodies the will of the sovereign and it should not, therefore, be altered by the ordinary legislative process. If the statutory law conflicts with or is not in conformity with the constitutional law it is *ultra vires* or unconstitutional and cannot become operative. The constitutional law is paramount, the statutory law is subordinate.

**Distinction between written and unwritten Constitution is unreal.** But the distinction between written and unwritten constitution is not real. There is no constitution which is either wholly written or entirely unwritten. All written constitutions grow and expand if they are to endure and serve their purpose. The real constitution is a living body of general prescriptions carried into effect by living persons. No constitution can ever be a strait-jacket. Nor can it be ever in the mind of the constitutional fathers to work out in all details a complete and final scheme of government operative for generations to come. They always seek merely a starting point and consequently provide a skeleton to be clothed with flesh, by customs, exigencies, national emergencies, economic developments, and various other factors affecting the welfare of the nation. Written constitutions, Bryce remarks, become "developed by interpretation, fringed with decisions, and enlarged by customs so that after a time the letter of their text no longer conveys their full effect". The constitution, no doubt, remains a printed document, but explained by judicial decisions, precedents and practices and illuminated by understandings and aspirations.

Let us illustrate it with a few examples taken from the United States, which is represented as the best type of a written constitution. The most notable example is the extra-constitutional development of the Political Parties. The constitutional fathers sought to provide a mechanism of government which would be free "from all violence of the faction" as Madison called it. But in the Presidential election of 1796, the third under the union and the first in which Washington was not a candidate, there were two national parties, one supporting John Adams and the other supporting Thomas Jefferson. By 1800, the party system had settled itself quite firmly in the government even to the extent of neces-



sitating the addition of the Twelfth Amendment so as to make the electoral college method workable. Since that time, party system forms the hub of the American national life. Next there is no basis in the constitution of the "Cabinet" which advises the President. President Washington found it useful to have a small group of advisers to whom he could look for counsel. Other Presidents continued with it and, today, it is impossible to dispense entirely with such a body. "Senatorial courtesy", "presidential nominating conventions," and the "residence" requirements in the election of Representatives are some of the examples of constitutional usages. "Legislative committees" are not authorised in the Constitution, but custom and usage has made them as permanent as if they were.

In the oft-quoted observation made by Chief Justice Hughes lies the truth how the American constitutional system has developed through judicial interpretation. He said, "We are under the Constitution but the Constitution is what judges say it is." The judges have to interpret the Constitution and to give a phrase a new interpretation is to give it a new meaning, and to give it a new meaning is to change it. The Supreme Court vested the power of dismissal in the President excluding the Senate altogether, though the Constitution says nothing about it. The decisions of the Supreme Court interpreted means of communications to embrace telegraphic, telephonic and radio communications, and in the means of transport were included rail, roads and airways. The Constitution declares that "Congress shall have power...to regulate commerce". What is meant by the word "commerce", and what it includes, the Supreme Court has given varied meanings to suit new situations, and make it responsive to new problems. "It has been the work of the Supreme Court, through the power of judicial interpretation," says Dr. Munro, "to twist and torture the term 'commerce' so that it will keep steps with the procession."

The British Constitution, the only example of an unwritten constitution, includes a considerable statutory element. Statutes regulate the succession to the throne, the executive departments, the suffrage, elections, the duration of Parliament, the relations between the two Houses, the judiciary, and much besides. Some of these matters have been subject to parliamentary action for centuries now. Others were formerly left to custom. It was the conflict over the budget of 1909, that led to the passage of the Parliament Act, which gives the House of Commons exclusive control over Money Bills and a means of enacting legislative bills without the consent of the Lords. The Amending Act of 1949, further strengthened the supremacy of the House of Commons. The statutory element seems to be gaining in relative strength. The Ministers of the Crown Act now gives legal recognition to the Cabinet, the office of the Prime Minister, the political parties and even to His Majesty's Opposition.

The distinction between written and unwritten constitutions, therefore, is not only confusing, but unscientific. Professor Strong calls the division between written and unwritten constitutions as false, misleading and illusory. The difference between them is really one of degree rather than of kind. Bryce's conclusion is that the terms "written" and "un-

written" are not happily chosen, "although the distinction they aim at expressing is a real distinction".<sup>11</sup>

**Flexible and Rigid Constitutions.** Bryce, accordingly, suggests a new scheme of classification.<sup>12</sup> Under this scheme constitutions are of two types, **flexible** and **rigid**. The basis of this classification is the method of changing the constitution and its relation to the ordinary or statutory law.

The flexible constitution places constitutional law and ordinary law on the same level in the sense that both are enacted in the same way and both proceed from the same source. If the constitutional law can be amended, repealed or altered in the same way as the ordinary law, the constitution is flexible. It does not matter whether the constitution is primarily written or consists largely of conventions. What is essential to determine is, how the constitutional law and statutory law stand to one another. Do they stand at par with one another or is some sanctity, some superiority, attached to the constitutional law? And what is the procedure required for altering or amending the constitutional law? If the constitutional law and the ordinary law emanate from the same source and both undergo the same procedure in passing and amending them, then, the constitution is flexible. It means that there is no difference between the constitution-making authority and the ordinary law-making authority. Parliament in Britain is sovereign and by sovereignty of Parliament Dicey means:

- (1) There is no law which Parliament cannot make;
- (2) There is no law which Parliament cannot unmake; and
- (3) There is under the English Constitution no marked or clear distinction between laws which are fundamental or constitutional and laws which are not.

Constitutional changes in Britain can be made by Parliament in the same way as it may pass a law prohibiting drinking. A law aiming to effect constitutional changes and the ordinary law are both subject to the same legislative procedure, i.e., a bill must be read three times in each House of Parliament and after having been approved by both Houses, it becomes law on being formally assented to by the king. The courts have no authority to nullify any enactment of Parliament. It means no special sanctity is attached to the constitutional law, and the constitutional and statutory laws stand at par to one another.

Flexible constitutions were almost the only kind known to the ancient world. The situation is now reversed. The only surviving example of a flexible constitution and unwritten, too, is Britain. Austria-Hungary had also an unwritten and flexible constitution before World War I. The Constitution of Italy down to 1928, was flexible, though written. Similarly, the first Constitution of the Irish Free State (1922-37) was written and it provided for two methods of amendment, but it "became, in practice, flexible."<sup>13</sup>

11. Bryce, J., *Studies in History and Jurisprudence*, Vol. I, p. 127.

12. *Ibid.* Essay 3, "Flexible and Rigid Constitution."

13. Sait, E.M., *Political Institution, A Preface*, op. citd., p. 333.

The rigid constitution possesses a special and higher status, standing above the ordinary law and alterable by a procedure different from the one used in ordinary law, thus, making it difficult to change. The constitutional law embodies the will of the sovereign and, consequently it should not be alterable by the ordinary legislative process. A rigid constitution interposes a barrier to statutory encroachments. The powers of the legislature are limited by the constitution itself. If the statutory law conflicts with or is not in conformity with and in accordance to the constitutional law, it is *ultra vires* or unconstitutional and cannot become operative. But who shall say what a particular clause of the constitution means or whether this or that statute is consonant with it? Legislatures cannot be entrusted with such a power, because the object is to devise means against legislative encroachments. The courts then become the guardian of the constitution. They fix its meaning, they set bounds to the competence of the legislature under it and annul what, in their opinion, goes beyond the constitution. This method of securing rigidity is called judicial control or judicial review.

The distinction between rigid and flexible constitutions is a real one and it found its full expression when for eighteen years the Congress of the United States found itself without power to levy an income-tax. and when, by decisions of the Supreme Court, Roosevelt's New Deal was torn to pieces. Britain affords a sharp contrast. There, ordinary statutes may override any decision of the highest court. And what Parliament has enacted, the courts interpret and apply unless Parliament has otherwise provided.

**Process of amendment of some Rigid Constitutions.** The process of amendment varies a good deal between countries with rigid constitutions, especially as between unitary and federal States. In the unitary State amending power is entrusted to the legislature, which, for this purpose, acts under special rules of procedure. Thus, in France, according to Article 90 of the Constitution of the Fourth Republic, the National Assembly adopted a resolution with absolute majority outlining the nature and the purpose of the proposed amendment. If the Council of the Republic approved the resolution by absolute majority, the National Assembly drew the text of the proposed amendment. If the Council did not approve the original resolution, it was submitted to the National Assembly within three months for a second reading. If the Assembly passed the resolution on second reading, it, then, proceeded to draw up the amendment itself. This proposed amendment was submitted to Parliament like any other piece of legislation. If the amendment had been passed by a three-fifths majority in both Houses, or by a two-thirds majority in the National Assembly on second reading, it was promulgated by the President and became a law. If it had been passed merely with absolute majority, it was submitted to popular referendum. But two matters were exempted from the operation of the amending clause: any amendment relative to the existence of the Council of the Republic was adopted with the consent of that body or by referendum; republican form of government, vide Article 95, was not subject of any proposal to amend the Constitution.

In federations, as one would naturally expect, some protection is



given to the units of the union. In the United States the initiative is taken by Congress with a two-thirds vote in each House, and, then, it is required to be ratified or approved by the legislatures or conventions in three-fourths of the States. Australia makes use of the referendum. An amendment, when proposed by absolute majority in both House of Representatives and Senate, is ratified by popular vote, but there must be a favourable majority not only in the Commonwealth but in a majority of the States too.

In Canada, the authority that passed the North America Act could alone alter or repeal it. The method of amending the Indian Constitution is not so complicated, for it avoids the difficult process laid down by the American and Australian Constitutions. Some parts of the Constitution can be amended by a simple majority in both Houses of Parliament; certain specified subjects require a majority of the total membership in each House of Parliament, a majority of not less than two-thirds of the members present and voting in each House, and ratification by one-half of the States; the remaining provisions of the Constitution require a majority of the total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting in each House.

But the degree of rigidity depends upon two other factors beyond the language of the amendment. When the legislature is the judge of its own powers under the constitution, there is no legal barrier to its encroachments. When the courts determine the constitutionality or otherwise of the acts of the legislature, they prevent legislative usurpation. Undoubtedly, judges respond to changing circumstances and public opinion, but they do so rather slowly than the legislature. Secondly, it depends upon the content of the constitution. Some constitutions are short, others long; some limited to general provisions, others replete with details; some willing to leave civil liberty with the legislature, others just the reverse. "What makes the Indian Constitution so rigid," says Jennings, "is that in addition to somewhat complicated process of amendment it is so detailed and covers so vast a field of law that the problem of constitutional validity must often arise."

**Merits and demerits of a Rigid Constitution.** The safeguards which a rigid constitution provides are not negligible. A rigid constitution must necessarily be a written constitution and a written constitution would be a model of draftsmanship, of linguistic elegance, and of apparent clarity. The constitutional fathers pour into the document their wisdom as into a vessel so that it may inspire the confidence and command reverence of the generations to come. Since a constitution provides the first sedative for an over-existed state of mind; it is, therefore, "an act of self-preservation for a society", says Woolsey, "to make a constitution somewhat difficult to alter". A rigid constitution safeguards legislative encroachments and is a guarantee against hasty changes. Placing serious obstacles in the way of organic changes is absolutely essential to the safe working of democracy. "It may be added," says Laski, "that an age which, like our own, has seen the classic safeguards of representative government

14. Jennings, I., *Some Characteristics of the Indian Constitution*, pp. 9-10.

thwarted on every side needs to reinforce its conviction of their urgency."<sup>15</sup> A rigid constitution guarantees to minorities their rights. Where fundamental rights are concerned, minorities cannot be expected to accept their rights imperilled by the majority action. If the majority ventures it, the judges perform their function of guardianship most conscientiously. Mr. Justice Jackson, of the Supreme Court of the United States, declared in *West Virginia State Board of Education v. Barnette*, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and establish them as legal principles to be applied by the courts."

A rigid constitution is conservative in the sense that it is free from dangers of temporary popular passion. It, accordingly, possesses the merits of permanence and stability and is sure to command the confidence of the people. The people, in fact, weigh even ordinary legislation in terms of the provisions of the constitution. Finally, the facility of amendment sometimes carries a deleterious effect. Referring to the situation under the German Republic, Max Radin said, "The heaping up of constitutional changes by simple votes the Reichstag destroyed what Professor Lowenstein of Yale aptly calls the 'constitutional conscience' of the nation, and rendered far-reaching and revolutionary changes by ordinance and *coup d'état* less shocking."<sup>16</sup>

But when rigidity and conservatism are carried beyond requisite necessity, they prove elements of weakness. The difficulty in amending the constitution very often proves detrimental to national interest. It causes unnecessary delay which may lead to revolution. Take, for example, the method of constitutional amendment in the United States of America. There is no prescribed time-limit, unless specifically determined by a resolution of Congress, within which a constitutional amendment may be ratified by three-fourths of the States legislatures. It can be delayed indefinitely thereby defeating the purpose of the amendment. Moreover, thirteen smaller States in America can veto the constitutional amendment much to the detriment of national interests. According to Lord Macaulay the most important cause of all revolutions is the fact that while nations move onward constitutions stand still. A rigid constitution becomes stationary unless amendment is extremely easy or its text is flexible. A good constitution is that which can be easily adjusted and adapted to the changing social, political and economic conditions of the country and keeps pace with the time. "Progress demands adaptability and flexibility and such adaptability and flexibility can only be secured in countries with rigid constitutions by a sufficiently easy method of amendment."<sup>17</sup>

A rigid constitution, which is necessarily written, having been made at a particular time cannot foresee the distant future. The vision of its authors, however far-sighted they might have been, must remain blurred; they cannot imagine the shape of things to come. "It (a rigid constitution)

15 *A Grammar of Politics*, p. 335.

16. As cited in E.M. Sait's *Political Institutions*, A Preface, p. 339.

17. Gillehrst, R.N., *Principles of Political Science*, p. 213.

is like an attempt to fit a garment to an individual without taking into consideration his future growth and changes in size...."<sup>18</sup> A rigid constitution is without any regard to the past and without anticipation of the future, and is, therefore, conservative in outlook. It does not adequately admit growth and expansion.

Under a rigid constitution the main concern of the judiciary is to see whether the law conforms to the provisions of the constitution or not. Judges are generally conservative in their outlook and when they go to the letter of the law, they are disregarding of the new spirit to which the constitution needs to be adjusted. "To entrust the judge," says Laski, "with the power to override the will of the legislature is broadly to make him the decisive factor in the State."<sup>19</sup> The judiciary becomes a super-legislature, but not in its representative capacity. Its decisions are political in nature and are, therefore, not impressive, impartial and worthy of any special respect as the decision of the courts should generally command. The attitude of the judiciary, which lacks elasticity and consequently adaptability, may accelerate the forces which upset the constitution itself.

Some writers hold that rigid constitutions are more valuable because they are less subject to party feelings. But this is not correct. Rigid constitutions are the focus of national sentiment; they are centres of national discussion and, as such, are more subject to party forces than flexible constitutions.

**Merits of a Flexible Constitution.** The advantages of a flexible constitution lie in its remarkable elasticity and adaptability. A flexible constitution can be amended with the same ease and facility with which ordinary laws are altered. It, accordingly, makes possible the adjustment of the constitution to the new and the changing needs of society. It is the flexible character of the British Constitution which has saved her on so many occasions from the dangers of revolution. Moreover, a flexible constitution is particularly best adapted to the needs of a progressive State since it ensures legal and orderly growth. As it easily meets new emergencies, a flexible constitution either minimizes or prevents revolutions by meeting them half way. In the life of every man, as also in the life of every nation, there are occasions when inelasticity proves not only harmful, but even dangerous. The Constitution of the United States of America demands that Presidential election must be held after every four years whether there is peace or war. If Roosevelt had been defeated by Dewey, it would have meant a new policy by the new government, though the primary object of Dewey, too, was sure to have been as that of Roosevelt, to win the war. General Elections during the period of war mean dislocation and distraction, but they cannot be avoided when the constitution is rigid. Such constitutional demands can be conveniently postponed under a flexible constitution. General elections in Britain were postponed year after year during World War II without disturbing the administrative machinery of the country and at the same time preserving continuity in the government's policy. Immediately after the

18. Garner, J.W., *Introduction to Political Science*, p. 394.

19. Laski, H., *A Grammar of Politics*, p. 304.



cessation of hostilities. Britain, once again, went to the polls returning in majority the Labour Party and dislodging Churchill from power. Bryce has aptly remarked, "They (flexible constitutions) can be stretched or bent so as to meet emergencies without breaking their framework; and when the emergency has passed, they slip back into their old form like a tree whose outer branches have been pulled aside to let a vehicle pass."

A rigid constitution, its critics assert, cannot justly claim to be representative of the needs and thoughts of the people. It is neither the result of natural historical growth, nor it represents the experiences of the people, nor it is moulded by the conventions of the national life. A flexible constitution, on the other hand, "provides an excellent mirror of the national mind". It represents the historical continuity of the nation's life and incorporates within it the changes as and when needed. A flexible constitution can, thus claim to feel the pulse of the public opinion. Judge Cooley has said that "of all the constitutions which may come into existence for the government of the people, the most excellent is obviously that which is the natural outgrowth of the national life, and which having grown and expanded as the nation has matured, is likely at any particular time to express the prevailing sentiment regarding government and the accepted principles of civil and political liberty."

**Weakness of a Flexible Constitution.** A flexible constitution is characterised to be unstable and with no guarantee of permanence. The process of amendment being simple, it is liable to be seriously affected by ever-changing popular passions and popular passion is devoid of reason as it depends upon emotions. Emotion chokes reason and strangles thought and it offers a psychological opportunity to the demagogue to play upon it and gain his end. Again, the constitution may be changed not to meet the exigencies of the time, but to satisfy the whims of the political majority. As Sidgwick says, "Valuable rules and institutions may be abolished in a transient gust of unpopularity and lose the stability given by antiquity and unbroken customs." Flexible constitution, therefore, is not suited to a country where the people have insufficient political training. It is suitable only for a people whose political training has been carried to a high degree of perfection. "In that training two elements would be of vital consequence to the safety of the system: first, an accurate understanding of their political rights and duties, general among the citizens; second, sleepless vigilance to detect violations of the constitution, and the utmost promptness and energy to resist and punish them." The rights of the people are liable to be encroached upon under a flexible constitution where the citizens are not vigilant.

A flexible constitution has also been criticised as the "plaything of judicial tribunals". Again, there is a popular belief that flexible constitution vests wide powers and a greater discretion in public servants. Finally, it is argued that a flexible constitution is not suited to democracies. It has greater affinity for aristocratic societies. "The masses in a democracy are suspicious, if not hostile, to constitutional prescriptions which have not been formally enacted but which rest mainly upon custom and usage," and all these customs and usages had been set by the aristocracy of the past.

**Conclusion.** Whatever be the merits of a flexible constitution the

modern tendency is towards a written and rigid constitution. The British Constitution now remains the only example of a flexible constitution and Gilchrist predicts "that in a few years not a single example of the flexible type will exist".<sup>20</sup> The United States was the first to experiment with a written constitution and other countries followed her. The future seems to be with rigid constitutions and many reasons can be enumerated in support of it. In the first place, the modern tendency is in favour of constitutional guarantee of rights which definitely restrains the powers of government. In the second place, democracy finds its best expression in the ideal of self-government which is embodied in a written constitution. The powers of government divided and distributed between different political divisions should not be changed by the ordinary law-making process. Thirdly, whenever a new form of government is introduced in any country replacing the old, the tendency generally is to make the new form definite in a written constitution. Finally, the world is veering round federalism, and a federal form of government needs necessarily a written and a rigid constitution. But the process of amendment should not be so complicated or difficult as to prevent the organisation of the State from corresponding to the existing political conditions. The amending process should be neither so rigid as to prevent change nor so flexible as to encourage needless tampering with basic principles. This can be best expressed in the words of Jawaharlal Nehru. Speaking on the process of amendment provided in the Constitution of India, he said in the Constituent Assembly: "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital organic people. In any event we could not make this Constitution so rigid that it cannot be adapted to changing conditions." Like the "safety valve of an engine", says Gettel, "the amending process should safeguard the governmental machine against too great speed and at the same time serve as an outlet against the danger of explosion".

**Origin of a Rigid Constitution.** A rigid constitution may find origin in two ways:

- (1) It may be made by a Constituent Assembly.
- (2) It may be granted by a superior government.

In the second type we include the Constitutions of the British Dominions, except the Constitution of Eire (the Irish Free State), which were granted by the British Parliament. The British North America Act of 1867 which essentially determines the Constitution of Canada, was the first in this connection. At that time and till the passage of the Statute of Westminster the legislatures of all the Dominion countries were subordinate law-making bodies. Technically, they could not amend or alter their Constitutions. But the Dominion legislatures have now practically full powers to change Constitutions. Similarly, the Government of India Acts, passed from time to time, were the grants of the British Parliament and the Indian Central or Provincial legislatures were

incompetent, being subordinate law-making bodies, to make any amendment to them.

**Theory of the Constituent Assembly.** The theory of a special representative assembly to frame the Constitution is the product of democratic revolutions of the seventeenth and eighteenth centuries. It originated during the English Revolution of the seventeenth century when the Levellers placed before the Army Council, in 1648 and 1649, two Agreements embodying the proposals for a representative assembly which "should draw up foundations of just government".<sup>21</sup> While Britain set the precedents for modern written and rigid constitutions, she had herself, recovering her normal temper, not adhered to the Revolutionary method. The practical application of the doctrine of a representative assembly to frame the constitution found its first expression in the Philadelphia Convention, when the delegates of the original States met to frame a Constitution for the United States of America. The concept of the Constituent Assembly is complementary to that of a written constitution and both of them were a part of the technique designed to secure the liberty of the individual against the arbitrary exercise of power by government and to establish a mechanism of government based on the consent of the people. The French Revolution demonstrated the most complete development of the theory of the Constituent Assembly, and the people placed such an abiding faith in its political utility that since then all the democratic countries of Europe, with the exception of pre-Mussolini Italy, were the creation of constituent assemblies.

The theory of the Constituent Assembly emphasises two important political lessons. These are the ideals of self-government and free government. Self-government means a government by consent of the governed through their chosen representatives. Free government means limited government, a government which respects individual rights and guarantees certain fundamental liberties. Both self-government and free government can best be secured through the technique of a written constitution. But a written constitution should be one made by a specially convened representative body of the people. As the constitution is an instrument for the realization of individual rights and public interests it is, accordingly, of supreme importance that the task of constitution-making should not be entrusted to any small group of self-selected men, however eminent they may be in public life. "If it is true that what concerns all must be consented to by all in the ordinary matters of government, it follows that in the matter of so important a matter as to the future of their government the people should be consulted." This is possible only through the medium of a representative Constituent Assembly or Constitutional Convention by whichever name we may call it.

**Requisites of a Constitution.** A good constitution must possess certain characteristics. In the first place, constitution should be definite and precise. It should be expressed in as clear a language as possible, because even the slightest ambiguity or doubt may lead to conflicting interpretations. In this respect a written constitution is more satisfactory than an unwritten one. The provisions of a written constitution are embodied in an

21. Kapur, Anup Chand, *Theory of the Constituent Assembly and its development in India*.



instrument prepared and formulated after careful and mature deliberations. It is obviously more definite and less uncertain than a constitution which primarily consists of customs and usages. The constitution must also be comprehensive. It should cover the whole field of governmental organisation and clearly enunciate the principles for the exercise of all political power. A good constitution should leave no gaps. It should not also go into rather needless details at some points and at others omit fundamentals. The French Constitution of 1875 contained no Bill of Rights, nor was there any express guarantee of civil liberty. It did not say how the ministers were to be elected, whether or not they were to be members of Parliament and to which Houses of the legislature they were responsible. There was no provision for annual budgets and besides a clause authorizing the Senate "to be erected into a High Court", the judiciary went entirely unmentioned. Such fundamental omissions in a constitution are likely to cause much ambiguity and necessitate filling in the gaps which may be twisted to meet certain purposes. Then, a good constitution should be precise. It must not be inundated with detailed clauses. Details often lead to possibilities of disputes. Besides, "a detailed constitution indicates distrust of government. Legislatures deteriorate and avoid responsibility if matters of importance are removed from their authority and decided in the constitution". Moreover, a constitution which goes into details very soon becomes overgrown. New social, political, and economic influences render many of the provisions obsolete, thus, necessitating frequent amendments. Frequent changes take away the sanctity of the constitution. Changes are, no doubt, necessary and inevitable, but it is better to have them emerge through the casual and relatively spontaneous ways rather than through the formal procedure of constitutional amendment.

Finally, stability and flexibility are the two prime requisites of a good constitution. The system of government which the constitution establishes must have a high degree of stability and its desirability is questioned by no one. The making of frequent changes, *inter alia*, tends to weaken that allegiance to, and respect for, the government which is such an important factor in securing an orderly conduct of political affairs. But, at the same time, the constitution of a modern State should be susceptible of progressive change or growth as errors of judgment in its framing are revealed by experience, as conditions change, and as political aspirations and beliefs of people undergo alteration. The problem is, therefore, to adopt a policy and procedure in respect of amending the constitution that will represent a compromise between stability and flexibility: neither so rigid a constitution as to prevent change, nor so flexible as to encourage tampering with basic principles.

### CONTENTS OF WRITTEN CONSTITUTION

A written constitution generally contains three sets of provisions:—

- (1) A series of prescriptions setting forth the fundamental, civil and political rights.
- (2) A series of provisions outlining the organisation of government.
- (3) Provision for the amendment of the constitution.

These provisions are regarded as the three important essentials of a constitution. Burgess calls the first group of provisions as the constitution of liberty, the second, the constitution of government, and the last, the constitution of sovereignty.

**Constitution of Liberty.** The constitutional provision of fundamental rights is considered as the *sine qua non* of liberty, for it imposes definite limitations on the powers of the government. Their inclusion in the constitution is a declaration of the fact that certain elementary rights of the individuals are inviolable under all conditions and the shifting majorities in the legislature of a country should not be able to tamper with them. The theory of fundamental rights implies limited and free government. It aims at preventing the government and the legislature from becoming despotic and it is the duty of the courts to ensure their observance. Fundamental rights are, accordingly, justiciable. In a republican State it is given the name of "Bill of Rights" or "Declaration of Rights". The people of the United States of America attach great sanctity to these rights. The Constitution of India contains elaborate declarations of the rights under the heading Fundamental Rights.<sup>22</sup> These declarations of fundamental rights surpass even the declarations of the Weimar Constitution which had been considered to be the best of all hitherto made.

But fundamental rights are not absolute. They are subject to limitations in order to secure or promote the greater interests of the community of the State. Freedom does not mean anarchy. Restrictions are a necessary part of the rights and many constitutions provide for such restrictions. When constitutions state the rights broadly and leave their interpretations to the courts, reasonable restrictions have been imposed in public interest.

**Constitution of Government.** The purpose of the constitution is to create and outline the powers of its various organs and prescribe the general manner in which these powers are to be exercised. In its widest sense the organisation of government includes the division of powers among the various departments, the organisation of the particular agencies through which State manifests itself, the extent and duration of their authority, the modes of appointment or election of public functionaries, and the constitution of the electorate. In some constitutions these provisions are fragmentary and very general in character. The French Constitution of 1875 provided only that the Deputies shall be elected by universal suffrage. It contained no provisions regarding the composition, the method of election, the term of office, organisation, or the powers of the Chamber of Deputies. It was absolutely silent on the organisation of the Judiciary. But the Constitution of the United States adequately provides for the distribution of powers among the executive, legislative and judicial departments and their organisation in a general way. It contains a brief and logical statement of their jurisdiction and powers. Then, there is a list of prohibitions both for the Central and the State governments. The Constitution of the United States also contains few miscellaneous provisions. According to Lord Bryce the Constitution of Ame-

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22. Refer to Part III, pp. 5-18.

rica "ranks above any other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language and its judicious mixture of definiteness in principle with elasticity in detail".<sup>23</sup> The Constitution of India, too, is a remarkable specimen of this excellence, though at many points it goes into needless details. There are clauses which do not need to be constitutionally protected.

**Constitution of Sovereignty.** A written constitution must definitely contain the method of procedure for amending the constitution and it is now regarded as an essential part of every written constitution. It is upon the method of amendment that the guarantees of individual liberty and the adaptability of the constitution depend. No written constitution is, therefore, complete without such a provision. "Human societies must grow and develop with the lapse of time, and unless provision is made for such constitutional readjustment as their internal development requires, they must stagnate or retrogress."<sup>24</sup> President Wilson has said that the constitution must of necessity be a vehicle of life and that its substance is the thought and habit of the nation. If the constitution can be amended easily, by a method that enables the political sovereign to express its will, there can be no conflict between actual conditions and legal organisation. But an easy method of amending the constitution leads to instability as a slight swing in popular opinion may change the fundamental form of the government. If, on the other hand, the constitution is difficult to amend or if the political sovereign does not possess the means to express its will, one of the two things may happen. First, there may grow up extra-legal institutions fully supported by public opinion. Take, for example, the election of the President in the United States. The Constitution provides for an indirect election. It has now come to be a direct one, but without amending the Constitution. Secondly, if the extra-legal institutions are not permitted to grow, the consequent result is an open revolution. Jennings says that a constitution has to work not only in the environment in which it was drafted but also centuries later. "It must therefore be capable of adaptation to new conditions as they arise."

It is not possible to consider all the modes of amendment as adopted in different countries. Three different methods are, however, generally followed:

(1) The constitution may be amended by the ordinary legislature as in the case of Britain. The procedure is exactly the same as that for the enactment or amendment of ordinary statutory legislation. Sometimes while the ordinary legislature is empowered to effect amendments it may, at the same time, be made subject to a special process. For example, the Constitution of India provides that an amendment of the Constitution may be initiated in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his

23. Bryce, J., *The American Commonwealth*, Vol. II, p. 28.

24. Garner, J.W., *Political Science and Government*, p 537.



assent and the Constitution will then stand amended. But if the amendment seeks to make any change in the Union List, Concurrent List, or the representation of States in Parliament, or the powers of the President, the Supreme Court, etc., the amendment shall also require to be ratified by the legislatures of not less than one-half of the States before the Bill is presented to the President for his assent.<sup>25</sup>

(2) A special body may be created for the amendment of the constitution. The typical example is the United States, of America. An amendment may be proposed by two-thirds vote in both Houses of Congress and ratified, unless Congress specifies which method should be followed, by legislatures in three-fourths of the States or conventions in three-fourths of the States. The second method is that on an application of the legislatures of two-thirds of the States, Congress may call a national constitutional convention for proposing amendments and it should be ratified by the legislatures of three-fourths of the States or by conventions in three-fourths of the States.

(3) **Popular Referendum.** It aims at referring amendments to the people for their approval. This is regarded as the most democratic method. Popular referendum for amending the constitution obtains in Switzerland, in Australia, and in some of the States of the United States of America.

It must, however, be emphasised that no constitution can be regarded as final or unchanging. A written constitution requires to be modified as a result of new political ideals. The provision of amendment should, therefore, neither be so rigid as to make the required changes practically impossible nor so flexible as to make possible frequent and unnecessary changes and, thus, lower the authority and respect of the constitution. The machinery of amendment should be like a safety valve, "so devised as neither to operate the machine with too great facility nor to require, in order to set it in motion, an accumulation of force sufficient to explode it". While providing for the process of amendment the authors of a written constitution should keep these considerations in view: the requirements of growth, and the element of conservatism.

### DEVELOPMENT AND EXPANSION OF CONSTITUTION

As previously stated, no constitution can be regarded as final. "Constitutions must grow," observed Lord Brougham, "if they are of any value; they have roots, they ripen, they endure." Written constitutions grow in three ways: by custom and usage, by judicial interpretation, and by amendment.

**Custom and Usage.** What habit is to the individual, usage is to the State; nations, like men, get into the habit of doing things in a given way. Habit then hardens into usage, which becomes difficult to change. The political customs and usages, which have their basis neither in laws nor in judicial decisions, are essential parts of the basic framework of the fundamental rules of the government in every country. They modernise, amend and democratise the otherwise rigid constitutions.

But there are two considerations in this respect. The first is that customs play an important part in the case of old rather than of new constitutions. Secondly, customs develop and thrive in countries where inhabitants cherish respect for the past and a higher regard for precedents. In India, there is no set of established conventions. The reasons are obvious. Indian Constitution has ever been in the melting pot, and her past masters always gave a small dose of reforms whenever the patriotic movement gained momentum. The present Constitution is still new. Customs take a sufficiently long time to be permanently established. In France, too, development of the Constitution through usage and custom has been very small, because France has been the laboratory of constitutional experiments. Between 1789 and 1875, she adopted and then rejected nearly a dozen constitutions and all these constitutions were the result of revolutions rather than of evolutions.

But the Constitution of the United States of America has considerably developed and expanded through customs and usages. Does the Constitution authorize the President to have a Cabinet and to consult its members as a collective body? The written Constitution is silent. President Washington found it useful to have a small group of advisers to whom he could look for counsel and other Presidents have continued with it, and, today, it is impossible to dispense entirely with such a body. The Constitution also provides for indirect election of the President. But the electoral system did not function as the framers of the Constitution had contemplated. The electors have now been reduced to mere dummies and the Presidential election has become direct. There are many more examples of customs and usages like senatorial courtesy, legislative committees, and residential requirements in the case of the Representatives, which have supplemented the Constitution of the United States and without them the Constitution would be unworkable. The most revealing of this is the rise and organisation of political parties. The party system that grew and matured in the eighteenth century was antithetical to the ideals of the men who drafted the Constitution. The system of government they set up did not anticipate the emergence of parties, but today it is impossible to work the institutions of the country without parties.

**Development by Judicial Interpretation.** The development of a written constitution as a result of judicial interpretation is now a well-established fact and it may be due to many causes. A written constitution, howsoever carefully framed, is likely to contain some ambiguities of language and deficiencies of expression. And words have meanings in the context of the time in which they are interpreted. When differences of opinion arise, a duty devolves upon the judiciary to ascertain not only the true meaning of that which is expressed in the constitution, but also that which the framers intended to express. The judges, then, draw their own conclusions. The Constitution of the United States gives to the centre, *inter alia*, the power over the armed forces of the country and the means of communications and transport. The Supreme Court interpreted armed forces to mean the army, the navy and the air. Similarly, the means of communications and transport, according to the interpretation of the Supreme Court, include rail, road, water, air, telegraphic, tele-

phonic and television services, etc. There are innumerable other examples and almost every clause of the Constitution has been the subject of interpretation and construction. The Constitution of the United States of America, indeed, to a large extent consists of "addenda". The judge-made definitions have added essential portions to the foundation work of the Constitution. Chief Justice Hughes succinctly said, "We are under the Constitution but the Constitution is what the judges say it is." Mr. Justice Frankfurter put it rather bluntly that the "Supreme Court is the Constitution".

**Development by Amendment.** A written constitution clearly provides for the mode of amendment and this is the most definite source of constitutional expansion. Constitutions must grow and develop as the life of the nation changes. No constitution can be permanent unless it guarantees progress. "Living political constitution must be Darwinian in structure and in practice." This aspect we have duly developed and discussed in the last section of the present Chapter.

### SUGGESTED READINGS

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|---------------------------|---|
| Boutmy, E.                | : <i>Studies in Constitutional Law.</i>   |
| Bryce, J.                 | : <i>Studies in History and Jurisprudence</i> , Essay III.                      |
| Dicey, A.V.               | : <i>The Law of the Constitution.</i>   |
| Finer, H.                 | : <i>The Theory and Practices of Modern Government</i> (1954), Chaps. VIII, IX. |
| Garner, J.W.              | : <i>Political Science and Government</i> , Chap. XVIII.                        |
| Hawgood, J.A.             | : <i>Modern Constitution Since 1817.</i>  |
| Kapur, A.C.               | : <i>Theory of the Constituent Assembly and its Development in India.</i>       |
| Kelsen, H.                | : <i>General Theory of Law and State.</i>                                       |
| Lowell, A.L.              | : <i>Government of England</i> , Vol. I, Chap. I.                               |
| Lipson, L.                | : <i>The Great Issues of Politics</i> (1954), pp. 24C-256.                      |
| McBain, L. and Rogers, L. | : <i>New Constitutions of Europe.</i>   |
| Mellwain, C.H.            | : <i>Constitutionalism and the Changing World.</i>                              |
| Newmann, R.G.             | : <i>European and Comparative Governments</i> , Part V, Chap. II.               |
| Roucek, Huzar and others  | : <i>Introduction to Political Science.</i>                                     |
| Sidgwick, H.              | : <i>Elements of Politics</i> , Chap. XXVII.                                    |
| Strong, C.F.              | : <i>Modern Political Constitutions</i> , Chaps. VI-VII.                        |
| Wheare, K.C.              | : <i>Modern Constitutions.</i>  |
| Willoughby, W.F.          | : <i>Governments of Modern States</i> , Chaps. VI-VII.                          |
| Wilson, Woodrow           | : <i>Congressional Government</i> , Chap. I.                                    |



## The Electorate and Representation

Democracy, we said, is of two kinds—direct and indirect. Under a system of direct democracy the will of the State is formulated and expressed by the people themselves. They make their own laws without the intervention of any intermediary agency. But such a type of democracy is impossible to obtain in our times. The modern State is a huge State with enormous area and population. It is physically impossible for the people drawn from the length and breadth of the whole State to frequently assemble together and take a direct part in making laws. Modern democracy is indirect and representative. The voters elect their representatives and they become members of the legislative assemblies charged with the duty of making laws and bringing harmony of purpose between the government and the governed.

**Origin of Representation.** But how did this practice of representation originate? There is no conclusive proof to determine how and where the practice of representation really originated. The general belief is that it originated in the Middle Ages as a device used by certain monastic orders and was applied to bodies called by the king for consultation on questions of broad interest, especially taxations. Under various names: Parliament in Britain, Estates General in France, Cortes in Spain, Diet in Germany such bodies came into existence towards the end of the thirteenth and the beginning of the fourteenth centuries and were soon playing an important part in the national affairs of their respective countries. For example, in Britain Parliament acquired rights of taxation and consultation and, thus, it became an indispensable part of the government. But assemblies were in no country democratic in any sense. They only represented certain elements in the population, the aristocracy, landed gentry, the rich businessmen, and the higher clergy. "But these elements," observes Soltau, "were probably fairly expressive of what may be called the politically conscious elements of the community; there is no reaction to think that a larger electorate would have acted differently in any important issue."<sup>2</sup>

With the end of the Middle Ages and with the emergence of the nation States, monarchy became more powerful and assemblies were

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1. There is an illuminating chapter on Representation in E.M. Sait's *Political Institutions*, A Preface, pp. 467-499.

2. Soltau, R.H.: *An Introduction to Politics*, p. 179.

either ignored altogether or they were reduced to mere formal bodies. This was, however, not the case with the British Parliament. The struggle between Cromwell and Charles resulted in the victory of Parliament. The Revolution of 1688 established the sovereignty of Parliament by reducing monarchy to dependence upon it, but Parliament was still very far from being a democratic Parliament. Before 1832, there were only a few thousands of voters spread all over the country and parliamentary seats were in the grip of rich men and were bought and sold like shares on the stock exchange. The first change in the system of representation, fixed in the Middle Ages, was made in 1832 and yet it was a long way from being a people's Parliament. At intervals after 1832 extending to 1928, there had been successive electoral reforms and now all adults over twenty-one, men and women, in the country possess the right to vote and elect their representatives to the House of Commons. Parliament today is really the House of Commons.

In other countries the champions of democracy ceaselessly advocated and strived for the creation of representative assemblies, which should be the centres of political authority. The struggle became so relentless and the demand became so popular that monarchies could survive only by making concessions to the general demand for parliamentary systems. Today, representative institutions have become distinguishing feature of a democratic State and its indispensable instrument of government. In fact, so strongly is entrenched the idea of popular government that even dictatorial governments have deemed it advisable to establish assemblies which they claim to be representative of the popular will. Hitler and Mussolini had their parliaments. The Soviet Union and other Communist States have their legislatures whose members are popularly elected, and are declared in their respective Constitutions as "the highest organs of State power".

**The electorate.** But all the people living in the State do not elect their representatives. Those who exercise the power of voting and periodically elect their representatives are a comparatively small fraction of the whole population. No country gives the right of voting to minors, to persons of unsound mind and aliens. Some States deny this right to women. Others impose property or educational qualifications. The citizen who possesses the right of voting and thereby choosing his representative is called a **voter** or an **elector** and the entire body of voters is termed the **electorate**. The electorate, therefore, constitutes the whole population of the State minus those who, at any time, cannot exercise the power to vote.

**Theories of Franchise.** What should be the true basis of franchise is one of the most difficult problems of democracy. Two schools of thought, however, have been prominent. During the eighteenth century, when the doctrines of natural rights, equality of men, and popular sovereignty were favourite themes of every political thinker, the demand was for universal franchise. It was held that sovereignty ultimately resided in the people and it was the right of every citizen to vote and participate in the determination of the policy of government. Democracy, it was further asserted, postulated equality of men and political equality could be assured only when all citizens were granted the right to vote.

It was claimed that laws and policies of government concerned all people and "what toucheth all should be decided by all". To grant suffrage to some meant the exclusion from representation of others. Unrepresented interests were likely to be neglected by the government. To safeguard the interests of all elements of population, it was essential that everyone must possess the right to have his opinion counted in the final decision of public affairs.

The second school was led by Bluntschli, Lecky, John Stuart Mill and Sir Henry Maine. They held that franchise was not an inherent right of a citizen. It was a right which was conferred by the State and it should not be granted to all. Moreover, franchise was a sacred right which required judicious exercise of judgment in the election of representatives. To extend it to the unenlightened and ignorant masses was to invite dark days for democracy. It was, accordingly, suggested that all citizens of the State should not possess the right to vote. This school of thought was against the idea of universal suffrage.

It is, however, now admitted that by universal suffrage its advocates meant universal adult suffrage. Minors had always been excluded from the right to vote. So were the lunatics and the aliens. Conviction for a crime has been regarded as a reasonable cause for disqualification. The modern view in regard to the nature of suffrage "is that it is an office or function which is conferred by the State upon only such persons as are believed to be most capable of exercising it for the public good and not a natural right which belongs without distinction to all citizens of the State."<sup>3</sup> But what ought to be the qualifications of persons believed to be most capable of exercising their vote for public good? Every State has its own electoral laws. Adult suffrage is the maxim of democracy, but at present "electorates include a fractional part of the population, reaching as high as three-fifths in the more liberal States; and in several States, such as New Zealand, where adult suffrage is permitted, almost one-half of the population are voters".<sup>4</sup>

**Excluded classes.** All States exclude minors, aliens, and lunatics from the right to vote and by adult suffrage is, therefore, meant every citizen, male and female, who is not a lunatic or criminal. The United States, Britain and France fix the adult age at twenty-one years. Russia considers eighteen years sufficient. In some cases the limit is as high as twenty-five. The underlying idea is that a certain maturity is essential for the judicious exercise of judgment in electing representatives. Criminals in confinement, idiots and lunatics are invariably excluded, because they do not possess the requisite mental and moral qualifications deemed necessary for a voter. Some States disqualify, either temporarily or permanently, persons convicted of crime for the reason that they are not good citizens and lack civic sense. Aliens are nowhere permitted to vote as they are not citizens of the State in which they reside and they owe allegiance to another State.

Some States impose other limitations, which may either be the survival of earlier restrictions or may be necessitated by political reasons.

3. Garner, J.W., *Political Science and Government*, p. 547.

4. Gettell, R.G., *Political Science*, p. 268.



One of these is that a voter must necessarily be an educated person with at least the ability to read and write. John Stuart Mill said: "I regard it as wholly inadmissible that any person should participate in the suffrage without being able to read and write...and perform the common operations of arithmetic." He emphasised that the universal teaching must precede universal enfranchisement. With the spread of universal desire for compulsory education majority of the advanced States now do not insist on this qualification to be prescribed in their electoral laws. Dr. Finer, summing up the argument that formal education is not absolutely necessary as a qualification for voting, observes that "it is a fundamental fallacy to argue that political behaviour has depended, depends now, or must depend upon instruction. It depends upon will, upon the passions... and men and women vote primarily for what they want and not from purely intellectual guidance". But in some States of America it is still being retained "chiefly to disfranchise the Negro". Here comes in political expediency. In India illiteracy is not a disqualification, if a citizen possesses another qualification such as the payment of land revenue, income-tax, municipal or district board rates. Literacy, of course, entitles a person to vote, irrespective of any other qualification.

The representative form of government was born on the ruins of feudalism and for long the exercise of suffrage was limited to property-holders alone. The theory underlying the property qualifications was that only those who own a certain amount of property may fairly be regarded as having a stake in the country. Another argument advanced in favour of the property qualification was that the right to vote should be conferred on those who paid taxes. John Stuart Mill was an ardent supporter of property qualification. He maintained: "It is important that the assembly which votes the taxes, either general or local, should be elected exclusively by those who pay something towards the taxes imposed. Those who pay no taxes, disposing by their votes of other people's money, have every motive to be lavish and none to economise as far as money matters are concerned, and any power of voting possessed by them is a violation of the fundamental principles, a severance of the powers of control from the interest in its beneficial exercise."

Ownership of property is a very common qualification for the exercise of suffrage in every modern State, except Russia. But the old theory does not hold true any longer. Possession of property may be one of the necessary qualifications for the exercise of suffrage, but it cannot be regarded as the only essential qualification. Political right if hedged by property qualification is no right at all. It is tantamount to disfranchising and disqualifying a vast majority of the people, howsoever worthy citizens of the State they may be. When property is the only qualification to elect representatives, the legislatures will be representative assemblies of only propertied class and other sections and interests of the community would naturally remain unrepresented. Such a nature of representation is a mockery of democracy. The argument that those who pay taxes should possess the right to vote stands entirely on a different footing. It has nothing to do with the possession of property. A tax is a contribution paid by individuals in a community for the services of government. Taxation and representation go together and it is a much valued democratic argument of the theory of representation. Taxes are paid, directly or

*should go together*

indirectly, by all citizens of the State and not only by the propertied class. Those who foot the bill of government, therefore, must have the means to see how money is being spent, no matter whether they possess property or not.

**Sex qualification.** Till very recently the franchise was confined to males only and women were not given the right to vote. In the United States full suffrage rights were extended to women in 1920. In Britain, the Representation of the People Act, 1918, allowed only a limited system of female suffrage. This Act was altered in 1928 and now there is equal franchise for men and women. Although the old prejudices against women suffrage are disappearing, yet eight States still deny to their women the right to vote and the right to be elected to public office. Even in Switzerland women do not vote in any federal elections and in Swiss cantonal elections, except in the cantons of Geneva, Neuchatel and Vaud.<sup>5</sup>

*A. against W. suffrage.* Female disfranchisement arose out of no rational consideration of women's need to participate in political activity, but out of the general social position of women, as determined by sexual role, family life and religious tenets. Those who opposed women suffrage emphasised that woman was the ministering angel of home and maternity was her proper mission. "The exactions of political life are inconsistent with the duties of child-bearing and the rearing of families."<sup>6</sup> Nature had not intended her for political life. Her participation in politics was sure to destroy the integrity of the home. If husband and wife differed in the political views and supported opposing candidates, it might mean discord in family life. Moreover, women would lose respect and honour which was naturally due to them, if they got themselves involved in the mud and mire of political controversies. Their participation in public affairs, in brief, would destroy their qualities as mothers and home-makers. The opponents of women suffrage further pointed out that women had shown general apathy in public affairs wherever they were granted franchise. They were unable, being physically weaker, to perform the arduous duties of citizenship and, as such, they had no right to demand the privilege of franchise. This besides, women would be guided by emotion rather than by reason in electing the representatives. And finally, their interest in public affairs would last only until the novelty wore off.

*Arguments in favour of women suffrage.* The demand for woman suffrage has worked simultaneously with the spread of democracy. Democracy, as a matter of principle, does not differentiate between a man and a man. Why should it then differentiate between sexes? *Both on logical and rational grounds* Both on logical and rational grounds suffrage cannot be denied to women. The right of voting is based upon moral and rational grounds rather than on physical considerations. "I see no adequate reason," says Sidgwick, "for refusing the franchise to any self-supporting adult, otherwise eligible, on the score of sex alone: and there is a danger of material injustice resulting from such refusal so long as the State leaves unmarried women and widows to struggle for a livelihood in the

5. Annual Survey of Women's Political Rights, prepared by the Secretary-General, U. Thant, for the General Assembly under a 1948 Resolution. *The Times of India*, New Delhi, August 21, 1964.

6. Garner, J.W., *Political Science and Government*, p. 564.

general industrial competition without any special privileges or protection."<sup>7</sup>

The advocates of women suffrage argued that as they were physically weaker, they were, therefore, more dependent on law and society for protection.) They must have their own say on the laws which affected their status. Moreover, men had, all through the ages, dominated womanhood, subjected their women to inhuman treatment and deprived them of their rightful rights and privileges. They would defend themselves against unjust class legislation only if they had the right to vote and their views got adequate representation. "It was also wrong to say that their participation would deteriorate the domestic and political life. In fact, the admission of women in politics would introduce in political life "a purifying, ennobling and refining influence" that not only would tend to elevate the tone of public life and bring about more wholesome political conditions in society, but also would insure better government."<sup>8</sup> To deny her the right of suffrage was to deprive womanhood of the instinct of good citizenship. Woman was the cradle of civilization and the future of every State depended upon her active participation in the affairs of government. If she was deprived of the civic sense, she had nothing to impart to her children. Finally, when women enjoyed all civil rights it was inconsistent and irrational not to give them political rights. Political rights must necessarily go with civil rights.

Democracy is a government of the people with the consent of the people. Both men and women living within a definite territory constitute the people of the State. If women are not given the opportunity to express their consent, it is negation of democracy. The old prejudices must necessarily disappear and women should stand at par with men in political life. Women in no way lag behind. They have proved their worth in the social and political life of every country. Why then should they be denied the right to franchise?

The enfranchisement of women has been followed by their election to public offices. The Congress Party in India fixed an appreciable quota of women candidates amongst its list of candidates, both for the Central and State legislatures, in the elections of 1957, and this principle was followed in the elections of 1962 and 1967. In the course of legislative proceedings women members have everywhere shown special interest in health, housing, temperance, social security, education, international peace and other like problems. They have also presided over various departments of government, and a woman was a Prime Minister in Ceylon and a woman occupies the same august office in India now. But Dr. Finer brings forward an interesting issue for a deep consideration. It would be instructive to quote him in extenso. He says, "The wholesale entrance of women into politics must inevitably introduce complications, owing to the contact of different sexes. No one who has an experience of co-education and co-operation in industry can avoid the conclusion that the minds of men and women are often diverted from objective con-

7. *Elements of Politics*, p. 385.

8. Garner, J.W., *Political Science and Government*, p. 568.



siderations and are seriously affected by considerations of courtesy and the personal beauty and desirability of one of the opposite sex whose fate or interest is involved. Boys and girls tell lies for each other, and turn in work in some one else's name; pugnacity is aroused in the presence of girls; and discipline is audaciously rejected because it is humiliating. Time is wasted in philandering, and the mind loses itself in idle fancies. In business women are often shielded from responsibility because of their sex; they are appointed because they are pleasing; they are dismissed and passed over in promotion because they are ugly. Women become extraordinary devoted to their work because they are devoted to a particular manager, and work badly for others in the firm. We all know such facts, and they should not escape us in public life. And although the vast majority of people in a representative assembly, its committees, and the ancillary organizations may be married, and therefore presumably (but only presumably) less susceptible to the charms and wiles of the opposite sex, everyday experience teaches us to expect certain results."<sup>9</sup> Whatever Dr. Finer says may be the result of his minute study of sex relations prevailing in the Western countries, but it cannot be true of the East where womanhood is held in high religious esteem and sanctity of relations between the two sexes is the *sine qua non* of the social order.

**Plural or Weighted Voting.** The modern democratic principle, therefore, is that every adult man and every adult woman, if not otherwise disqualified by the electoral laws, exercise the right of voting in the election of their representatives. This may be reduced to the maxim of one vote. But in certain States prevails the system of plural or weighted voting which is also sometimes called differential voting. The system of plural voting means that certain persons have more than one vote. The idea under the system of plural voting is that persons better qualified or those supposed to have greater interests at stake are given more votes than those less qualified or having smaller interests in the country. Belgium introduced this system as early as 1893 and it exists there even now. Every citizen having attained the age of twenty-five years and having lived in the commune for at least one year is allowed one vote. In addition to this, a supplementary vote is allowed to every man who has reached the age of thirty-five years and has a legitimate child and paid a tax of five francs to the State, and two supplementary votes to all male citizens of twenty-five years age who possess a diploma from an institution of higher teaching or had held or holds a public office. No one, however, has more than three votes. The system of plural voting prevails in India as well. For example, graduates of universities have more than one vote in the State elections. In Britain, before 1918, voters had many votes as positive qualifications. The Reform Act of 1918 permitted, at most, two votes per voter to be chosen among the qualification of residence, occupation, and university degree. In 1945 it was estimated that there were 200,000 qualified to cast a business vote and 175,000 a university vote. The Labour Government abolished the "plural vote" by the Representation of the People Act of 1948.

^ The opponents of universal suffrage were reluctant to entrust poli-

9. Finer, H., *The Theory and Practice of Modern Government*, p. 234.

tical power to the ignorant masses. They feared that a demagogue or a self-seeking politician would usurp the real power by misleading the ignorant and uninstructed people. The device of plural voting was invented as a "counterpoise to the numerical weight of the least educated". John Stuart Mill was a great apologist of this system. He maintained that it was a great political wrong to rate all votes as equal. Votes, he added, should not be counted; they should be weighed and those who have a greater stake in the country or who are better qualified to vote should be given greater weight.

But the practical defect of plural voting is the difficulty in prescribing a just and equitable standard of weighing the votes. To give premium to education or property is to attach arbitrary values to a certain category of votes. "Thus, while a university graduate may receive a special vote, the Civil Engineer or Architect who is as highly qualified in his particular branch of work, may justly complain that he has no extra vote".<sup>10</sup> Property, too, is not a true criterion. Democracy cannot work when political rights are based upon wealth. Weighted voting for the wealthy means a class government to perpetuate vested interests. Such a process is most undemocratic as it is inconsistent with the principle of political equality. Plural voting, therefore, is fast disappearing as it has disappeared in Britain. One vote, one person is the requirement of democracy.

**Methods of making Electoral Areas: Single District and General Ticket.** Two methods are generally adopted in the forming of electoral areas. One is to parcel the total area into as many electoral districts, technically called **constituencies**, as there are representatives to be chosen; one member to be chosen from each constituency. All electoral districts, or constituencies, are of equal or approximately equal in size. This method is known as the single district, or in French the *scrutin d'arrondissement*, or the Single-Member Constituency. The second method is the general ticket system or *scrutin d'liste*, or the Multiple-Member Constituency. Under this system, the country is not divided into as many electoral districts as there are the number of representatives to be elected. A smaller number of districts, or constituencies are created from each of which several members are elected. The size of the district determines the number of representatives it will send and each elector has as many votes as there are members to be returned.

The advantages claimed for the single district system are that it establishes a more intimate relationship between representatives and their constituents and ensures that all parts of the State will be duly represented. The representative may also be known to the constituency, for very often he belongs to the district itself. The voters can, thus, intelligently exercise their votes and elect those persons who are deemed best and capable of discharging their responsibilities most conscientiously. The representatives, in their turn, being personally familiar with the needs of their constituents can get their grievances removed.

To sum up, the single-member constituency method of selecting representatives "increases the responsibility of the voter in choosing his

10. Gilchrist, R.N., *Principles of Political Science*, p. 280

representatives and, at the same time, perhaps, intensifies the interest of the representative in and his responsibility to his constituency."<sup>11</sup> The representative is keen to regularly nurse his constituency and acquaint his electors how he has justified the trust reposed in him. He cannot afford to remain oblivious of the fluctuations in the public opinion and if he feels that the popularity of the party to which he belongs is receding, he becomes clamorous, because it means a fall in his electoral support. This system of election also provides adequate opportunities for the representation of minorities, and, thus, secures reasonable balance of interests. The comparative smallness of a single-member district tends to reduce the expense and trouble of an election. The system is simple and intelligible, and it can be conveniently and advantageously applied in large States.

But the single-member district method is not free from defects. The first objection against it is that it narrows the choice of selection which may lead to the election of not only inferior, but often corrupt representatives. The choice is still more restricted when the single-member constituency method is coupled with the locality rule. The representatives so chosen begin to entertain a very narrow idea of representation. They regard themselves as the representatives of local interests rather than the representatives of the nation as a whole. Such a political mentality is highly detrimental to national solidarity. "The custom which regards the legislator," says Garner, "as the representative of particular locality is responsible for the election of men whose energies are likely to be engrossed with the pressure of petty local influences, and, therefore, often deprives the State of the services of able statesmen who would be willing to serve in the legislature could they be freed from such influences."<sup>12</sup> Finally, as single-member constituency method requires a constant revision of areas, the party in power resorts to the process of "gerrymandering", that is to say, the electoral areas are formed in such a way that the ruling party's majorities are spread over the largest number of constituencies possible and coop up the opposing party with overwhelming majorities in a small number of districts.

The merits claimed for the general ticket method are that it ensures that the majority will prevail. Dr. Finer in this connection says that "the ideal system—that is to say, a system having exactness of representation as its only object—would be that in which the whole nation was taken as a single constituency, where lists of candidates for the whole number of members of the legislature could be presented and advocated by anybody. Such an arrangement, if it could be organised, would provide an exact reflection of majority and minority groups."<sup>13</sup> Then, the general ticket method allows greater freedom in selecting candidates and this permits the election of superior men. And when the members elected represent the whole State, instead of single districts, they will make their actions conform to the welfare of the State as a whole rather than to interests of particular districts.

11. Garner, J.W., *Political Science and Government*, p. 633.

12. *Ibid.*, p. 635.

13. Finer, H., *The Theory and Practice of Modern Government*, p. 55.



But the defects of this system "are not only serious", observes Finer, "they are actually destructive of the values most people want from representative government". The general ticket method leads to mushroom growth of political parties with confusing programmes baffling the judgment of voters. Then, the electoral area being the State as a whole or huge multi-membered districts, it will not be possible for the electors to have personal evaluation of the candidates. The result is centralised authority of the party machine to organise the issues and conduct the campaign. And it permits the least degree of local and personal adaptation of the candidates. There is, accordingly, complete divorce between the electors and their representatives. Neither it is possible for the representatives to nurse their constituencies nor the system allows bye-elections. All this is against the elementary principles of a representative government.

Finally, it does not give adequate representation to minorities. Under the general ticket system, a party casting a majority of the votes can elect all the representatives with the result that minority parties, even though they constitute a very considerable part of the electorate, may be wholly without representation. Under the district system the minority parties, unless they are in a minority in all the districts taken independently, will secure some representation. It should be noted, however, that under the district system, it is possible for a party that is in a minority in the State as a whole to secure a majority of the representatives. This happens when the bulk of the voting strength of the majority party is concentrated in a few districts while that of the minority party is widely spread over.

In spite of certain obvious drawbacks the single district plan has been accepted as the most favoured electoral method. In fact, there is no plan of election which may be free from drawbacks. The general ticket plan, too, is making a rapid headway with the introduction of the system of proportional representation. The system of proportional representation, it is claimed, possesses not only all the advantages of the general ticket method, but obviates its disadvantages by assuring that minority parties will secure representation and that such representation will be proportionate to their relative strength.

### METHODS OF ELECTION

**Direct and Indirect Methods of Election.** There are two methods of electing representatives. If the voters directly participate in election and elect their representatives, it is known as the direct method of election. The process of direct election is very simple. Every voter goes to the polling station and records his vote either in favour of one candidate or the other. A candidate securing the maximum number of votes is declared elected. This method of election is the most popular and is followed in all democratic countries for electing members of the representative or the people's chamber. The election of the House of Commons in Britain is direct. All members of the State Assemblies and the House of People (Lok Sabha) in India are now directly elected, except for a few indirectly elected and two nominated from the Anglo-Indian community.

(When voters do not directly participate in the election of their representatives, but choose only an intermediary body which alone will make the final choice, the method of election is called indirect. This intermediary body of electors is usually known as an electoral college. Indirect method of election involves double election. In the first instance, the general mass of voters elect from among themselves a small group of electors. These electors then elect the final representatives who become members of the legislature. The final choice of electing the representatives is, therefore, not that of the general mass of voters, but of the intermediary body of electors whom the general mass of voters had elected in the first instance. This system of election limits the power of the voters.)

The indirect method of electing representatives is often used for the constitution of second, or popularly designated as upper, chambers. In France, the Upper Chamber is indirectly elected. In U.S.S.R. the Upper Chamber is called the Soviet of Nationalities. Deputies to the Soviet of Nationalities are voted for separately by the Councils of Union Republic, Autonomous Republic, Autonomous Regions and National Areas.<sup>14</sup> According to the Government of India Act, 1935, the Federal Assembly was to be indirectly elected by the members of the Provincial Legislative Assemblies. This was a reactionary step and it was deliberately provided for by the alien rulers of India. The Constitution of India provides for indirect election of the Upper Chamber at the Centre, the Council of States (Rajya Sabha).

① Direct election makes people conscious of their rights and duties and it is fully in keeping with democratic principles. ② A direct contact between the electors and their representatives stimulates interest in public affairs and develops the sense of public spirit. It also sharpens the political intelligence of the people. ③ Democracy has an educative value and there is no better method of educating citizens than giving them the opportunity of directly participating in the election of their representatives. ④ The spirit of political vigilance so injected in the people enables them to see and judge if their representatives justify the trust reposed in them.

⑤ But the method of direct election has been vehemently opposed by some political thinkers. It is maintained that all voters are not the best judges to wisely exercise their political right. The average voter, it is argued, cannot always choose for himself the able man. His judgment, while casting a vote, is very often influenced by considerations other than political standards. ⑥ Direct election means election campaigns and intensive political propaganda for and against different candidates. Both the press and the platform are geared up for this purpose. The demagogue plays with the emotions of the masses and the catchwords of the professional politicians mislead them. When voters are swept off their feet by gusts of popular passion, the natural result is the election of undesirable candidates. ⑦ Election campaigns often assume ugly forms

14. Karpinsky—*The Social and State Structure of the U.S.S.R.*, pp. 186-87.

15. Article 80(1).

and candidates are vilified. Many citizens, who otherwise would have established their mark as legislators and administrators, avoid to contest election. They are "election shy", as it is termed, and the nation suffers when deprived of their services.

① Indirect election, its advocates claim, offers the only escape from the dangers of universal suffrage and the evils of mob rule. The ultimate choice of representatives rests with the body of selected persons constituting an electoral college. These electors possess superior intelligence and political knowledge. ② In the selection of representatives they are guided by a keener sense of responsibility than an average voter. Moreover, when representatives are indirectly elected popular passion is avoided. There are neither election campaigns nor party propaganda. All this tends to reduce the evils of party system. ③ Indirect election, it is further said, "introduces an element of delay in elections, and acts as a sort of sieve through which election fever passes".<sup>10</sup> Emotions subside, reason plays its part and the election of the representatives is according to certain norms of values. Finally, indirect election is best suited for those countries where the people are not sufficiently educated and experiment with a democratic government has just started. Those whose judgment should really count elect the representatives.

④ But indirect method of election does not find much favour. It is held to be undemocratic and politically inexpedient. Nor has it any educative value. When voters have no direct participation in the election of their representatives, they take only lukewarm interest in politics and eventually become negligent in public affairs. ⑤ Moreover, the indirect method of election does not decrease the evils of party system. Actually it leads to more party commotion and in countries where political parties are well-organised, election by indirect method has become a sheer formality; the typical example is the Presidential election in the United States. ⑥ Indirect elections, also, mean intervention of the middleman in politics which has been regarded as a perpetual source of political mischief. Finally, it is feared that this system of election increases chances of bribery and corruption. A handful of people can be easily tempted and they easily succumb to such temptations.

### LENGTH OF OFFICE AND INSTRUCTED REPRESENTATION

**Length of Office.** If the legislature is to be the barometer of public opinion, it is essential that there should be periodical election of its members. A perpetual or a long term of office is contrary to the principles of a representative government. But what exactly ought to be the legislative tenure? There is no precise rule of universal application and the practices of the States vary widely. For example, the members of the British House of Commons are elected for a period of five years. The House of People in India is also elected for five years whereas the life of the House of Representatives in the United States is only two years. The tenure of the Upper Chambers in every country is usually longer. The membership of the House of Lords is hereditary, except for the Law Lords and the Peers now appointed for life. The

<sup>10</sup> Gilchrist, *op. cit.*, p. 280.



French Senate, according to the Constitution of 1875, was elected for nine years. The life of the Council of States in India and the Senate in U.S.A. is six years/

Annual elections Four or five years is now considered the most-favoured term for the popular assemblies, although it is only one year in two of the States in America. At one time annual elections were widely accepted as a real test of knowing popular feeling. The supporters of annual elections even maintained that "where annual elections end, tyranny begins". But this principle had to be given up, because of practical difficulties and obvious inconveniences which annual elections involved. One year is too short a term for the representatives to understand administrative technicalities and rules of legislative procedure. It also means a constant shifting in membership and the chambers in large parts are composed of new and inexperienced members who have everything to learn. Too short a tenure without any certainty of re-election makes representatives oblivious of their duties towards their constituents. The administration also becomes unresponsive and irresponsible as there is no continuity in policy. Fluctuating governments bring inefficiency, corruption, nepotism and deterioration in the moral tone of the Governors and the governed.

Annual elections also mean perpetual agitation and excitement throughout the country, nourishing political factions and encouraging unnecessary restlessness. The frequency of elections, as Judge Story observed, favour "rash innovations in domestic legislation and public policy, and produce violent and sudden changes in the administration of public affairs founded upon temporary excitements and prejudices". The voters, too, become disinterested if there are elections every year. The best type of candidates always avoid such an "ever-recurring strain and excitement". At the same time, annual elections are very expensive.

It is true that popular opinion changes, but it does not change so quickly as to justify elections every year. A representative government provides other means for the expression of public opinion and getting the grievances redressed. Annual elections are, therefore, impracticable. If the legislature can really be responsive and responsible to public opinion, it is imperative that its tenure should neither be too short as to defeat the true purpose of representation, nor should it be too long as to remove the representatives from the range of popular control. John Stuart Mill aptly said: "On the one hand the member ought not to have so long a tenure of his seat as to make him forget his responsibility, take his duties easily, conduct them with a view to his own personal advantages, or neglect those full and public conferences with his constituents which, whether he agrees or differs with them, are one of the benefits of the representative government. On the other hand, he should have such a term of office to look forward to as will enable him to be judged not by a single act, but by his course of action."

**Types of Representatives.** There are different concepts of what a representative should be and the duty which he owes to his electors. We divide them into four types: (1) The Mirror type; (2) The Chameleon type; (3) The Statesman type; and (4) The Party member type."

17. *Representative Government*, Ch. XI, p. 39.

18. Dillon, Conley, H., and others, *Introduction to Political Science*, p. 62.

The mirror type representative is the first. It is maintained by the advocates of such a type of representation that representatives should mirror or reflect the population they represent. They should be precisely like the people, rich and poor, farmers and industrialists, lawyers and merchants, teachers and medical men, landlords and tenants, in every representative assembly and exactly in proportion to the numerical strength of each class in the population of the State. For example, if two-thirds of the population is agricultural, then, the assembly should in that proportion consist of the farmers and others directly or indirectly engaged in agriculture. In brief, the members of the legislature should be as much like their constituents as possible. As Jennings has put it,<sup>19</sup> there should be Tom, Dick and Harry in every Parliament. It is urged that common people representing other common people can best represent the will of the people and they are the best to tell the government what it cannot do and what the people will not stand. This is tantamount to what actually the body politic could have done if they were to decide the problems themselves.

The Chameleon type is the representative who does what exactly his electors tell him to do, nothing more, nothing less. He should change his views as the chameleon changes his colour. This type of representation is also known as the telephone type of representation. According to this view, a representative is the deputy or agent of the people who elected him and he speaks as his masters desire it. He exercises little independent judgment except in the process of trying to discern what his constituents want. He is not expected to make any alteration or modification in the terms of his instructions without the express authority of his electors. In fact, he has no wishes or will of his own as a representative. This type of representation is also known as instructed representation and was generally the accepted theory of representation in the early stages. In a federation, members representing the constituent States in the Upper House of the Central Legislature were deemed as ambassadors of the States they represented. It was, accordingly, the inherent right of the States to instruct them about the attitude and stand they were to take on different problems before the legislature and the manner in which they should vote on a particular issue.

But the modern theory of representation outright rejects the idea of instructed representation. Laski regards it as wholly false. Lieber considers it "unwarranted, inconsistent and unconstitutional". Intelligent instruction, it is maintained, is not available. In fact, it is altogether impossible to ascertain the real and genuine will of the electors. If it may be assumed that intelligent instruction can be made available, even then, it is impossible for the representatives to refer all the problems to their electors for instruction. Promptness in legislation is as much necessary as deliberation itself. If representatives are required to consult their constituents item by item the entire legislative activity of the State is sure to come to a standstill. Moreover, legislation is a difficult process as it involves many technicalities. Many things come to the knowledge of the members only on the floor of the House and the representatives ad-

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19. Jennings, I., *The British Constitution*, p. 80.

just their views there and then as the conditions or circumstances advisedly permit. It is, therefore, unwise to bind them in advance with instructions and pledges, or they should change their views on the behest of their constituents as and when they want and as often as they desire. The electors have, undoubtedly, the right to get fullest expression of the general attitude of their representatives. They are also entitled to know their views on all current problems. They may reasonably ask for their explanation on any question of their decision. But the representatives cannot and should not subordinate their judgment to the will of the electors. If a representative is to appeal to his electorate on every point in order to get their verdict, the representative ceases to have either morals or personality.<sup>20</sup> Nor can he remain abreast of events to needs of his country when he knows that he may be thwarted at every step and with as many instructions as there are voters. The instructions given may not only be conflicting, but diametrically opposed to each other. This is not the purpose of representation and representative democracy. The legislative assembly consisting of the chameleon type of representatives has no coherent voice, no maturity and no stability and firmness in the transaction of business before it. When all representatives speak in deference to the wishes of their own representatives, the legislature is not a forum of discussion. It is a babel of tongues.

The statesman type of representative finds its classic definition in the words of Edmund Burke. He said, nearly two centuries ago, "Your representative owes for not his industry only, but his judgment, and he betrays instead of serving you if he sacrifices it to your opinion."<sup>21</sup> The representative must respect the views of his constituents, he should endeavour to redress their grievances and feel their pulse and act accordingly. But he must not sacrifice his independence of judgment and narrow his horizon of approach to various problems. He should look at all problems from the national rather than from a local view-point. Burke also gave a true analysis of the relationship between the electors and their representatives. "The Parliament," he declared, "is not a Congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates. But Parliament is a deliberative assembly of one nation, with one interest, that of the whole where not local purposes, not local prejudices, ought to guide, but the general good resulting from the general reason of the whole. You choose a member, indeed, but once you have chosen him, he is not a member of Bristol, but he is a member of Parliament." A national assembly is an embodiment of national interests. Burke tried to emphasise that find the best man to represent you, a man in whom you would have full faith and confidence as your representative, but once you have elected him depend upon him to use his judgment about what is best.

The concept of statesman or uninstructed type of representation is based on two important facts. The first is that most people are not well enough informed about problems confronting the government to make

20. Laski, H., *A Grammar of Politics*, p. 319.

21. The writings and speeches of Edmund Burke (Little Brown and Company, Boston, 1901), Vol. II, p. 95.



decisions, and, secondly, that, even if they were, the process of decision making is so difficult and complex as to preclude the people as a whole from exercising good judgment on isolated issues. If instruction is to be the basis of representation, able and conscientious men can hardly be expected to serve in legislatures where they are expected to say only what it pleases their electors. They will keep themselves away from such a farce of representative institution rather to serve therein. The services of great, talented and experienced statesmen would, thus, be lost to the nation.

The fourth type of representative is the party-member type. Elections are now contested by political parties rather than individuals. The voters vote for a party and its programme. It is, accordingly, necessary that the representative should rigidly live up to his party label even if he is to surrender his independence of judgment as well as dependence upon the judgment of his constituents. The theory is that political party is the only real vehicle of representative democracy and for the accomplishment of political programme. It is the party that selects candidates to contest elections and campaigns to win it and, thus, constituting the majority to form the government and to implement its policies. If it is in Opposition, it must oppose the party in power, criticise its policies and expose it to the electorate in order to win their support and to win elections. In whatever role the party is, it is nothing without the unity, solidarity and disciplined duty of the representatives elected on the party ticket. They must swim and sink together. If a representative elected on the ticket of a particular party decides to change his party label, political morality demands that he should submit himself for re-election on the ticket of the party to which he now owes allegiance. "Clearly, he is not entitled", as Laski has said,<sup>22</sup> "to get elected as a free trader and to vote at once for a protective tariff."

The consensus of opinion now is that there is much to be said in support of the party-member type of representative. A representative democracy is unthinkable without political parties. A reasonable fixed legislative tenure provides sufficient guarantee to the constituents to judge the party by what it did for them. No political party can to any dangerous extent afford to misrepresent the feelings of its constituents. When party is judged by the constituents at the general elections and people vote for its programme, the unity of the party demands that members elected on its tickets must act in unison as disciplined adherents. Without such a code of conduct representative democracy cannot succeed.

### QUALIFICATIONS OF REPRESENTATIVES

The responsibilities of representatives are many and difficult. The problems which they are required to tackle are various and complex. They should, therefore, be the pick of the nation chosen with due regard to their experience of public affairs and renowned for their honesty, integrity, broad outlook and selfless patriotism. Every State prescribes some qualifications for representatives in order that those seeking election may offer proof of a genuine interest in public affairs. "Absence of limitation," writes Laski, "may give us a Younger Pitt, but it gives us also

22. *A Grammar of Politics*, p. 319.

a large number of members who go to the legislative assembly merely for the prestige which membership confers."<sup>23</sup> These qualifications are not fixed. They differ from country to country, but all governments insist upon the following minimum qualifications.

1. **Citizenship.** A representative must be a citizen of the State, either by birth or by naturalization, and in possession of full civil and political rights. An alien, who owes allegiance to another State and whose sympathies belong to a foreign country, should not be elected a representative and entrusted with the duty of law-making. If an alien is permitted to seek election and get elected to the legislature, his aim would either be personal to push his own interests, or to secure favourable legislation for his own financial interests, or to further the political interests of his own country. (In all probability his interests would be antagonistic to the interests of the country of which he has been elected a representative. The propriety of excluding aliens, therefore, from the legislative assemblies is now universally accepted.)

2. **Residence.** Some States insist upon residence within the constituency as a necessary qualification. (In the United States) so far as the House of (a) Representatives is concerned, while there is no constitutional provision that members shall be residents of the districts by which they are chosen, it has nevertheless become a political practice that such conditions shall obtain. In the case of the State legislatures, this requirement is often one of constitutional or statutory character, and, when not, the practice is almost invariably followed. In Britain, India and many other countries the practice is for candidates to be selected regardless of their legal place of residence. The advantages of non-residence system are frankly acknowledged everywhere, including in the United States, for it tends to encourage the entrance into public life of persons that are desirable to have in public service, and enables the members to view their responsibilities from the national standpoint rather than from the interests of the particular locality.

3. **Age.** Practically all States require that a representative must have attained the age of majority. A higher age is insisted upon because for law-making experience and mature judgment are considered of vital importance. Twenty-one or twenty-five years is generally the age-limit fixed for representatives of the legislative assemblies. For Second Chambers, however, a higher age is necessary, the idea being to check the radicalism of the popular chamber by maturer judgment and conservatism. In France a Senator was required to be forty years of age. According to the Government of India Act, 1935, thirty years was the minimum age for Upper Houses and twenty-five for Lower Houses, both federal and provincial. (The Constitution of India also prescribes the same age-limits for the Council of States, and the House of People respectively.)

4. **Property.** Some States demand possession of property as a necessary qualification for representatives. It is maintained that representatives who own property have sufficient leisure to devote their time and attention to legislative work, and in nursing their constituencies. They have not to worry for a living. Moreover, they have more stake

in the State and so they discharge their duties more diligently and without even remuneration.

But possession of property as a necessary qualification for purposes of election is now rapidly disappearing. It is considered as a political anachronism. Democracy is established on equality and enjoyment of equal rights by all citizens of the State. It does not differentiate between a man and a man because of the accident of birth or due to some misfortune on which he has no control. Likewise, there is no justification in the argument that only owners of property have the leisure to devote their time and energy to the legislative work and that they are likely to be cautious in initiating legislative measures. Payment of remunerations to the legislators is now a common accepted practice of representative democracy and those who have no property get the wherewithal to devote their time exclusively to the legislative work.

5. **Office.** In every State holders of certain offices are debarred from becoming members of the legislature. In the United States of America members of the executive cannot have seats in Congress. This is due to the rigid application of the theory of Separation of Powers. In countries with Parliamentary form of Government, as in Great Britain and India, Ministers, who are heads of the Executive departments, are also members of the legislature, but the permanent officials are not. In India the law specifies that no one may be a member of the Legislature if he holds any office of profit other than an office declared by Act not to disqualify the holder. The idea being that those who hold offices of profit if allowed to become members of the Legislature, they would always secure legislation to further their own interests.

6. **Election Malpractices.** Every State prescribes rules for fair conduct of elections and election campaigns. If any candidate infringes these rules, he renders himself liable to disqualification. In fact, so much evil has been wrought by corrupt customs and election malpractices that Acts have been passed in every country prescribing rigorously what each candidate may spend, and how he may spend it.

7. **Religion.** In some countries law may require that a person may believe or have faith in a particular religion in order to become a member of the legislature. In Great Britain, for example, ministers of the established churches and the clergy of the Roman Catholic Church cannot be elected to the House of Commons.

8. **Experience.** Professor Laski suggests that a representative must possess previous experience and adequate knowledge of the working of a local body. He is of the opinion that a representative should be compulsorily required to serve at least for three years on the local body in order to make himself eligible for a seat in Parliament. In this way the representatives "would gain that 'feel' of institutions so necessary to success".

## MINORITY REPRESENTATION

**The Problem of Minority Representation.** It is maintained that the existing system of representation does not represent the whole people. A candidate who secures majority of votes is declared elected and he



represents in the legislature the point of view of those electors only whose votes he was able to secure. Those who had supported an unsuccessful candidate remain unrepresented. The situation becomes still more confusing when the difference in votes secured by the successful and defeated candidates is almost negligible. Let us assume that from a particular constituency two candidates A and B seek election. Let us, again, suppose that out of a total of 4,000 voters in that constituency 2,005 vote for A and 1,995 votes are cast in favour of B. Since A has secured the majority of votes, he is declared elected. It means that 2,005 voters only find representation and the remaining 1,995 voters remain unrepresented. The minority stands in danger of being disfranchised.

[Such a system of representation, where mere majority election exists, cannot be the real basis of democracy. A democracy is a government of the people and the people constitute the whole mass of the people. It is, therefore, an essential principle of democracy that it must not deny to a considerable portion of people participation in the conduct of their political affairs. Democracy, if it can claim to be the government of the people, must be representative of all classes of opinion. Law, in order to be the manifestation of the will of the people, should be supported and approved by the representatives of the large majority of electors. But when minorities are not adequately represented and they have not the opportunity to express their opinion, laws made by a legislature cannot be said to have the widest consent of the people. In a country where large groups of people feel that their will does not find expression in the making of laws, which they are called upon to obey, such laws cannot command deferential and effective obedience. The unrepresented minorities fret and fume and ultimately they are compelled to revolt against the tyranny of the majority rule as political malcontents of today are the revolutionaries of tomorrow.] "In a really equal democracy," says John Stuart Mill, "every and any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of representatives. Man for man they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege; one part of the people rules over the rest, there is a part whose fair and equal share of influence in the representation is withheld from them, contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation."

[Adequate representation of minorities, therefore, is the most important question which confronts representative democracy. Minorities may be of many kinds—political, national, racial, linguistic and communal. It is unfortunate to have so many minorities and particularly those divided on racial, linguistic and religious grounds. Political minorities are the product of representative government. But the problem of minority representation is not so much insoluble when the people are divided on political ideologies. It is all a question of giving to the minorities adequate representation. When minorities, however, differ from the majority in race, religion and language, and every minority desires to have a distinct expression of its separate individuality in order to safeguard its

religious, cultural and social institutions, it is, then, that the problem of minority representation assumes a vicious complexion. But this is not really the question of representation of minorities. It is a plea for appeasing the minorities and it is in this aspect that the problem becomes insoluble.)

India is the only unfortunate country where people are divided both horizontally and vertically and communalism has always been the bane of her politics. In other countries people are essentially divided on either political or economic issues. All schemes of minority representation in these countries aim at adequate representation of the political minorities. It is this aspect of minority representation which has received universal support especially at the hands of John Stuart Mill, Lecky, and others. Lecky declared, "The importance of providing some representation for minorities is extremely great. When two-thirds of a constituency vote for one party, and one-third for the other, it is obviously just that the majority should have two-thirds and the minority one-third of the representation." (Mill admitted that in a democracy the majority must rule, but he insisted that the minority would be represented in proportion to its number. He emphasised that there could be no real democracy, but a false show if all minorities were not represented proportionately. If every or any section was disproportionately represented there was not equal government, but a government of inequality and privilege.)

**Proportional Representation.** Mill was an ardent advocate of proportional representation. Proportional representation is that method—there are several forms—whereby the percentage of seats in a legislative assembly captured by one party is proportionate to its share of the popular vote. The assumption is that if the Socialist Party polls 2 per cent of the votes, it should wind up with 2 per cent of the seats in the legislative assembly. The aim being to give representation to all sections of opinions and interests in the State in proportion to the numerical strength of their votes, and that no vote should be lost.

There are many expedients and forms which are suggested and practised to secure representation for the minorities. (But all such schemes are not the varieties of proportional representation. There are only two varieties of proportional representation, the Hare Scheme of Single Transferable vote, and the List system. The rest are schemes of minority representation. The difference between proportional representation and minority representation is important. All schemes of minority representation aim at giving representation of some kind to minorities, but not in proportion to the number of their votes whereas proportional representation gives representation to minorities in proportion to their voting strength. In both these cases, however, the existence of parties or groups is formally recognised, and each party or group is given special representation.) It must, however, be noted that no scheme of proportional representation can work on the basis of a single-member constituency. It involves, firstly, a multi-member constituency, and, secondly, the candidate is not elected by securing relative or absolute majority, but only if he reaches a quota of votes, that is, total number of votes cast divided by the total number of seats determines the quota of votes necessary to get elected. This is done to

bring about mathematically exact representation of the electorate in the legislature.

### SCHEMES OF PROPORTIONAL REPRESENTATION

**The Hare system.** The scheme most commonly connected with proportional representation is called the Hare system and is associated with the name of Thomas Hare, who formulated it in 1851 and then elaborated it in his book, **Election of Representatives**. The scheme is also given the name of Andrae system, because Andrae, the Danish Minister, introduced it in Denmark. Some call it Single Transferable Vote system as the surplus of votes of the candidates who have been declared elected are transferred to other candidates whom it can help. Others call it Preferential System, because of the preferences which a voter is required to give to the candidates.

With whatever name it may be called, (this system of representation provides for the election of representatives by general ticket. The constituencies are multi-member with at least three seats. No maximum is considered necessary, although Lord Courtney suggested a fifteen-member constituency as a reasonable limit.<sup>24</sup> Whatever be the number of the representatives to be returned from a constituency, each voter has only one effective vote. Every voter is, however, asked to indicate on the ballot paper his first preference or choice, second preference, third preference, and so on by marking the figures 1, 2, 3 against the names of the candidates. He can vote for as many candidates, by denoting his preference, as there are seats to be filled from that constituency. The candidate in order to be elected requires a certain quota of votes. Different methods are followed to determine the quota. The simplest is to divide the number of votes cast by the number of seats to be filled from the constituency, and the quotient is taken as the quota or the number of votes necessary to elect a candidate. For example, if the total votes cast are 8,000 and there are 8 members to be elected from that constituency, the quota necessary for the election of votes will be 1,000. But Droop suggested another method of determining the quota. He found that in constituencies of 3 to 8 members sometimes inaccurate results were achieved in the practical operation. He suggested to determine the quota by dividing the total number of votes cast by one more than the number of seats to be filled from the constituency.

In counting the votes only the first preferences or choices are counted first and a candidate securing the required quota is declared elected. His surplus votes, if any, are passed on to candidates not yet elected, in the order expressed in the preferences. The process of transferring surplus votes to the next preferences continues down the list until the necessary number of representatives has been elected. Not only surplus votes of successful candidates are transferred to later choice, but, if need be, of those candidates as well who have secured so few votes that they have no chance of being elected at all. The idea being that no vote is to be

*In this way*



lost. The voter is, thus, assured that if the candidate of his first choice does not require his vote, his second or other choices will gain by it.

This method of proportional representation prevailed in Great Britain in the election of the members of the four University constituencies to the House of Commons. In South Africa it is used for Senatorial elections and in certain municipalities. In India, it has not been much in vogue. Members of the Council of States (Rajya Sabha) are elected by the members of the State Legislative Assemblies in accordance with the system of proportional representation by means of a single transferable vote. The same system is used for the Presidential election.

The obvious defects of the Hare System are that it is a complex scheme and is unintelligible to the ordinary voter. There is also the probability of mistakes to occur in counting and recounting the votes. As it conceives of multi-member constituencies undue advantage would be taken by party knots, cliques and sectarian combinations. It, therefore, perpetuates sharp cleavages which undermine the unity of the nation.

**List System.** Another variant of proportional representation is the List System. According to this plan all candidates are grouped in lists according to their party labels and every party offers a list of its candidates up to the number of seats to be filled for each constituency. The voter need only select the party of his choice and by voting for that party he automatically votes for the list submitted by that party and for the candidates thereon in the order in which the party has determined the list of the candidates. It means that voters vote for the list and not for the candidates and the seats are divided among the parties in proportion to the number of votes each list has secured.

The number of votes required, the quota to secure a candidate's election, is determined, as in the Hare System, by dividing the total number of votes cast by the number of seats to be filled. Then, the total number of votes polled by each party list is divided by the quota and the result is the number of representatives to which each party is entitled. If all the seats are not filled up, the party which has the largest fractional surplus gets the remaining seat. There is another device which may also be followed. The fractional surplus of votes secured by the party in the neighbouring constituency may be added to make up the deficiency in the quota. Let us suppose that the total number of votes cast is 50,000 and five representatives are to be elected from that constituency. Let us, again, suppose that there are three party lists—the Congress, the Samyukta Socialists and the Communists—and each list has polled 21,500, 20,500 and 8,000 votes respectively. The quota of eligibility being 10,000 votes two seats each go to the Congress and the Samyukta Socialist parties. None can go to the Communists. One of the two things may, therefore, happen. If the fractional surplus method in the constituency is followed, then, the fifth seat may also go to the Congress because their fractional surplus is higher than that of the Samyukta Socialists. If constituency transferring fractional surplus of votes method is followed, then, the votes polled by the Communist party in the neighbouring constituency, say 2,500, are transferred to be added to the total of 8,000, thus, entitling the Communists to claim one seat. Similarly, the surplus of 1,500 votes secured

by the Congress may be added to the votes of the party in another constituency entitling it to an additional seat.

The List System is exceedingly simple, since the voter need only select the party he likes and by selecting it he votes for the entire list of candidates of the party he has selected. But all this amounts to undue importance of the party leaders. The electorate has nothing to determine and decide. The strict List System has, accordingly, been subjected to a great deal of criticism. Recently some modifications have been offered to it and in a number of countries the voters have been allowed to indicate their own preferences. Such a system has recently been adopted in Italy and in certain parts of Austria. Switzerland had previously given considerable freedom to its voters, permitting them to substitute names on the lists.

**Arguments for and against Proportional Representation.** The advocates of proportional system praise it for its mathematical accuracy in reflecting popular opinion and consider it the most democratic and just method of election. It is a device which ensures representation to all parties, big or small, and that, too, in proportion to their voting strength. The Parliament in this way becomes a mirror of the opinion of all the people. Lord Acton has observed that the method of proportional representation "is profoundly democratic, for it increases the influence of thousands who would otherwise have no voice in the government; and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into Parliament a member of his own." It is here that democracy really works as a government of the people. Proportional representation gives to minority parties a sense of security and political contentment. The Hare System gives every elector real representative for whose choice he alone is responsible. The representative is not a normal representative chosen by others. By giving him a first or second preference the elector has actually willed him to remain the custodian of his trust and while reposing that trust in him he might have paused and thought over the suitability of his choice. This political intelligence in the electors carries two advantageous results. In the first place, it develops civic interest, and, secondly, it helps to elevate the character of the legislature by securing the election of more enlightened and distinguished representatives. Finally, proportional representation "recognises the nature of modern political parties as problems of national scope". It does not permit "gerrymandering", which is an inevitable result of the single-member constituency system, and also acts as a great check on bribery and extravagance. Keith offers two more arguments in favour of proportional representation. Voters under such a system of representation, he says, "will be able to vote for men of character and independence of judgment and they will not be forced to accept the policy of a particular party". This is, however, problematic. A really cogent argument offered by Keith is that the "margin of unattached votes, the swing of which usually decides the fortune of elections, shall diminish to insignificance".

But the political efficacy of proportional representation is seriously questioned wherever it has been tried. Laski is of opinion that the diffi-

culties of the modern State cannot be remedied by reform of electoral machinery. These difficulties are mainly moral in character and should be met "by the elevation of the popular standard of intelligence and the reform of the economic system, than by making men choose in proportion to the neatly graded volume of opinion")<sup>25</sup> The system of proportional representation has, indeed, failed to improve the standard of public life, because it breeds small parties and groups which make impossible to obtain coherent public opinion. Multiple party system implies weak government, and weak government ultimately means irresponsible government. Irresponsible government coupled with incoherent public opinion is a sectional government which encourages corruption, jobbery, nepotism, toadying, and all other evils inherent therein. Proportional representation has, in fact, been an effective agent of ministerial instability. It makes impossible the broad large majorities on which effective government is based, and turns every government into a precarious combination of group representatives liable at any time to be withdrawn by their patrons. Where every party is ensured representation vested interests help in creating new parties. The mushroom growth of political parties with incoherent public opinion ultimately means the failure of parliamentary system of government and shaking of the people's faith in democracy)

Then, as Dicey has pointed out, the mathematical representation of all sorts of opinion is highly objectionable, for there may be an opinion which may be bad, foolish and even undesirable. Taking an extreme example, he asks, would it be desirable to have an advocate in Parliament of those who have extreme hatred of the Jews? Dicey also holds that the more you make the system of election complicated and difficult, the more you throw the voters into the clutches of the party agents and wire-pullers.<sup>26</sup> (But the worst side of proportional representation is that it destroys the national character of the legislature and makes it an arena of divergent sectional interests. All issues deliberated upon in the legislature are discussed not with reference to their bearing on the general well-being of the nation, but from the point of view of a particular group or interest. In this way legislation is paralysed as group legislation inevitably tends to increase class legislation and class legislation jeopardises the life of the nation.)

The areas for election, under all schemes of proportional representation, must be multiple-member constituencies. Multiple-member constituencies intensify the complexity of choice and increase the power of the parties, and particularly of the central councils of parties. When the party leaders settle the lists of names, they can demand unconditional allegiance from the successful candidates. The result is that the attention of the representatives is directed and concentrated always to the party machine than to the constituency. (The intimate contact between the voter and his representative is, thus, eliminated. A good electoral system should enable the candidates to be known to the electors in a genuine way, and after elections the representatives must remain closely connected with their constituents so that a personal relation develops between them.

25. Laski, H., *A Grammar of Politics*, p. 315.

26. *Law of the Constitutions*, pp. LXXVII-LXXIII.



But the system of proportional representation "destroys any prospect of personal relations between the member and his constituents; he would simply become an item in a list, voted for almost entirely on party grounds". Further, the election campaign becomes less intensive, and more extensive, that is, "it does not occupy itself with the cultivation of the individual voter by personal appeals, but in the institution of monster demonstrations, like processions, in which the mechanical apparatus for making a noise or creating a diversion is predominant". Nor does the system provide for bye-elections. A bye-election is always the barometer of public opinion. If no opportunity is provided for the expression and realisation of changes in the public opinion the legislature loses its representative character.

The system of proportional representation is sufficiently complicated and beyond the comprehension of an average voter.) In the Hare System counting and recounting of votes is a complex and tedious problem with the intricacies of preferences and transferring of votes. Moreover, (it places voters at the mercy of the counting authorities. In the List System there is an additional danger of corruption. Prospective candidates are tempted to use unfair and corrupt methods to get their names included in the party list. It also helps to increase the influence of party bosses and encourages party manoeuvring. The group managers arrange the original lists in such a way as to secure majority for their own nominees)

On these grounds the bulk of competent opinion is opposed to the introduction of proportional representation.<sup>27</sup> Laski says that its alleged better representation of national opinion is doubtful.<sup>28</sup> He does not agree with the opinion that in a single-member constituency the minority remains unrepresented while in the proportional system this danger is adequately met. Laski fully agrees with Dr. Finer that the "horizon of a minority is not limited by the boundaries of a constituency". Political decisions are not made by an arithmetical process of counting votes. "More urgent is the weighing of influences that take place in the law-making process. And minority views may find adequate institutions therein for the expression of their opinions and desires."<sup>29</sup> The late Professor Esmeine, an eminent French jurist, condemns outright the system of proportional representation. He says, "To establish the system of proportional representation is to convert the remedy supplied by the bicameral system into a veritable poison; it is to organise disorder, and emasculate the legislative power; it is to render cabinets unstable, destroy their homogeneity, make parliamentary government impossible."<sup>30</sup>

Humphreys, Ramsay Muir, and Keith have tried to meet the objections of the critics of the proportional representation. A realistic approach will, however, disclose that proportional representation is not pure vice as its critics make us to believe. Nor is it all virtue as its advocates seem to prov. The system has now been incorporated in some of the

27. Sidgwick, *Elements of Politics*, p. 396.

28. *A Grammar of Politics*, p. 316.

29. *Ibid.*, p. 317.

30. As quoted in J.W. Garner's *Political Science and Government*, p. 663.

modern constitutions and it is convincing proof that proportional representation does attempt to solve some of the evils from which the body-politic suffers. Even in Britain, where two party system exists, it has found due recognition. The Government there offered a proposal to Parliament, in October 1940 and renewed in October 1941, that "it will be the desire of His Majesty's Government when a General Election again becomes practicable to give sufficient notice for the creation of a new register, and this interval will also afford opportunity for Parliament to consider, if it so desires, questions connected with changes in our electoral system". The proposal did not materialize, but the question of introducing the method of proportional representation is not off the track. The Leader of the Liberal Party, after the General Election results in October 1964, declared that he would press for its introduction. It has not happened. But if Britain adopts the system of proportional representation, the Liberals, as they plead, would have many members in Parliament, for its proportion of the total vote in the past two General Elections had been much higher than its proportion of MP's.

Some countries which adhere to the system of proportional representation have tried to eliminate its shortcomings through special devices. In West Germany, for instance, a "5 per cent clause" denies any representation in the legislature to parties failing to poll a minimum of 5 per cent of the votes. This has successfully prevented the formation of splinter groups. In fact, all but two or three parties have tended to disappear from the political arena and the voters rally, as under the single-member constituency, to only the largest groups. But this device takes away the essence of proportional representation that minorities will be represented in proportion to their strength.

### OTHER SCHEMES OF MINORITY REPRESENTATION

There are some other schemes of minority representation. But none of them is a scheme of proportional representation. All these schemes allow some representation to minorities, but not necessarily in proportion to their numerical voting strength.

**The Limited Vote Plan.** Of the various schemes which have been adopted to ensure representation to minorities, one is the **Limited vote plan**. (Under this system there are multi-member constituencies with at least three seats. Each voter is allowed to cast smaller number of votes than there are seats to be filled. Moreover, he must not give more than one vote to any single candidate. His votes should be spread over to as many candidates as there are votes to cast. For example, in a five-member constituency each voter may be allowed to vote for four candidates or even less. In this way minority parties become reasonably certain of electing one or two members.) The method has been used at various times by Britain, Italy and Japan for election to lower Houses, but it no longer prevails.

In practice the limited vote plan secures representation only for fairly large minorities. It does not work when there are many parties. Then, it does not allow proportional representation. It is a method intended to give only limited representation. The method can be employed only under an electoral system in which three or more members are

to be chosen from each constituency. It cannot be applied under a system of single-member constituency. Finally, it tightens the party machine, increases the power of the party bosses and does not permit independence to the members thus elected, of course, with no choice to the voter.

**The Cumulative Vote System.** The cumulative vote system allows the elector to cast as many votes as there are representatives to be chosen from a constituency. He is permitted either to give, or cumulate, all his votes on one single candidate, or distribute them among the different candidates as he pleases. If there are five members to be elected from a constituency, it is the option of the elector to give all his five votes to one member, or give one vote to each, or distribute them in any other way. The cumulative method is popularly known as "plumping".

(The advantage of this method is that it enables even a small minority to elect at least one member by cumulating all votes on one candidate.) But minorities must be well organised in order to ensure the election of their candidates. It also requires strict party discipline and careful instruction to the voters as to how they are to distribute their votes. All this entails rigidity of party control and the evils connected with it. It may even happen that where five members are chosen, the minority party elects two or three and the majority only one or two. The cumulative method, also, involves a waste of votes. The surplus of votes accruing to a popular candidate cannot help other candidates. It does not secure proportional representation. Finally, the constituencies should be large enough so that the members elected from each constituency should be more than three. If the constituencies are small, returning, say, only three members, the results of the Limited Vote Plan will be repeated.

**The Second Ballot System.** Another method of minority representation is the Second Ballot System. When there are only two candidates contesting election for a single seat one who secures simple majority is declared elected. But when there are more than two candidates it may happen that the candidate elected secures only a relative majority and not an absolute majority. For example, if in a constituency three candidates are contesting election, candidate A may secure 5,000 votes, candidate B 4,000 and candidate C 3,000 votes. A has secured a majority over B and C, but candidates B and C have more votes between them than those secured by A. That is to say, candidates B and C secured 2,000 more votes than candidate A. The representative elected under such an electoral system represents only a minority of voters. To avoid such an unjust nature of representation the system of Second Ballot is adopted.

The Second Ballot System makes a new vote for the second time necessary. But all the candidates do not contest this time. The candidate who secured the least number of votes is dropped out. The contest now remains between A and B only, the idea being that the voters who previously voted for C may now vote either for A or B and the candidate securing majority of votes may be elected. If at the second poll majority of votes go to candidate B, then, B, and not A, would be elected. If the system of relative majority had prevailed, then, A would have been elected. "The second ballot (there might be a third or further ballot where there are many seats)," says Gilchrist, "secures a more just



reflection of the opinion of the electorate where three or more candidates seek election. The Second Ballot System demands a single-member constituency, and it does not secure proportional representation.)

**The Alternative or Contingent Vote.** The Second Ballot suffers from serious defects and to avoid its evils and shortcomings, the Alternative or Preferential or Contingent Vote method has been put forward. The system proposes only one election, but every voter is permitted to mark his preferences on the different candidates, thus, indicating his first, second or third choice. The candidate of the first preference is declared elected if he gets an absolute majority. If none of the candidates gets an absolute majority, then, the candidate who has got the least number of first preferences is dropped and his votes are distributed to other candidates according to the second choice of the voters. The candidate securing an absolute majority after the redistribution of votes is declared elected. If no candidate even now gets an absolute majority, the candidate at the bottom will again be dropped and his votes similarly transferred according to the second choice of the voters. The candidate who secures an absolute majority will then be declared elected. This method, too, necessitates a single-member constituency system and it does not ensure proportional representation, although it is an improvement on single-member constituencies with relative majority. Secondly, certain small minorities may still not be represented at all.

**Communal Representation.** A novel device of representation of minorities found its origin in India during the British regime. This was representation on communal basis. Under this system of representation parties were not divided on political or economic issues, but on differences of religion, faith and creed. Every religious community secured a separate representation. This was done in two ways. First, by separate electorates where voters of each community voted separately for candidates of their own community. e.g., the Hindus voted for Hindu candidates, the Muslims for Muslims, the Sikhs for Sikh candidates, and so on. The second method was the reservation of seats under a system of joint electorates as in the case of the Scheduled Castes. But to divide the people on the basis of religion is to destroy root and branch the national solidarity of a country. Such a system creates new mentality among the leaders of various communities. They hug the system and agitate for its continuance and extension. A vicious circle is created. Communities which have not hitherto received separate recognition begin to agitate for their rights. National solidarity is torn asunder threatening even the unity of the country. The system of communal representation has been abolished from the Republic of free and sovereign India but the separatist trends so systematically encouraged and nursed by the Britishers have left behind a trail of sinister forces which still appear in various forms.

### FUNCTIONAL REPRESENTATION

**Functional Representation explained.** Functional or occupational representation is a protest against the system of territorial representation. In modern States the usual basis of representation is territorial. A district or constituency is demarcated and voters living within the territorial limits of that constituency elect a representative or representatives. This

system of territorial or geographical representation is held to be inconsistent with the spirit of democracy. It is maintained that members elected from different constituencies are not representatives in the real sense of the term. It is a misrepresentative system rather than representative. A representative elected on the territorial basis cannot represent the varied and diverse interests living in a constituency. He can represent only his own interests which he has in common with others. People pursuing the same kind of work or functions have more things or ideas in common than people living in the same locality. It is, therefore, proposed to replace the traditional territorial system of representation by occupational representation in which various industrial or other occupational groups should be reflected.)

In the beginning demand for reform in the electoral system of territorial representation took the form of a demand for proportional representation.<sup>31</sup> But it was soon realised that the system of proportional representation ensured representation only to minorities which were recognised as political parties. It gave no representation to other large and important groups, economic, social, professional, and others which had special interests peculiar to each. All such interests, it was urged, required special representation in the legislature. A cobbler should represent cobblers and the really representative bodies are those which are related to the various functions which individuals performed.

**Advocates of the Representation of Interests.** The system of representation based upon classes, professions, occupations, or other groupings of society is not of recent origin. Mirabeau at the time of the French Revolution declared that a Legislative Assembly ought to be a mirror of all the interests of society. Sieyes, too, emphasized the need for special representation in legislature of the great industries of society. In more recent times, however, the system of functional representation found an increasing number of advocates. Duguit maintains, "All the great forces of the national life ought to be represented—industry, property, commerce, manufacturing professions, and even science and religion."<sup>32</sup> (But the theory of functional representation is primarily associated with the name of G.D.H. Cole. Cole says that in place of an omni-competent representative body there should be in the society as many separately elected groups of representatives as there are distinct essential groups of functions to be performed.)

There are two divergent groups who advocate occupational representation from different motives. The Communists support it, because it centres the voter's attention upon his work relationships and forces him to think in proletarian terms. The non-Communists, on the other hand, advocate it because of their disgust with the present system of electing legislators from single member constituencies. Graham Wallas is of the opinion that while the lower chamber may be elected on the territorial basis, it is necessary that the second chamber be representative of various interests and functional groups. The Webbs advocated a system in which there should be a Political Parliament and a Social Parliament.<sup>33</sup>

31. Dunning, *op. citd.*, Vol. IV, p. 25.

32. Sidney and Beátrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain*.

Both these groups, however believe that men are "much more intelligent and trustworthy, judges of the real qualities of those who work in the same industry than of those who live in the geographical district, while many also believe that the chief political issues are necessarily industrial issues which need to be decided by the representatives of the industries involved."

The system of functional representation is commonly known as the Soviet system. The geographical or territorial system of representation has been replaced in Soviet Russia by a system based on the vocational principle, i.e., workers, farmers, professional men and other classes choose their own representatives without regard to territorial areas. A representative in the Soviet Union does not represent the district from which he happens to be elected. He represents a particular interest. Mussolini introduced the system of occupational representation in Italy and the Senate was, accordingly, reorganised. It consisted of various trades and professions, employees and trade unions recognised by the Fascist Government. The Weimar Constitution of Germany (1919) introduced a new innovation by creating a National Economic Council representing the interests of labour, capital, and consumers.<sup>33</sup> The National Economic Council contained the elements of a third legislative chamber. The Council did not possess the power of legislation, but the Constitution provided that all drafts of important laws relating to social and economic matters should before introduction in Parliament be submitted to the Council for its opinion. It could, also, initiate through its own members bills directly in Parliament. In Great Britain, the universities had till recently special representation in the legislature. Representation of interests prevails in India, both in the Central and State legislatures where seats have been reserved for several interests. In the States seats are reserved for universities and local bodies.

**Criticism of Functional Representation** The principle of functional representation, "has such serious weaknesses as to make it little, if any, better than territorial representation."<sup>34</sup> The late Professor Esmien stigmatised it as "an illusion and a false principle which would lead to struggle, confusion, and even anarchy."<sup>35</sup> Dr. Finer says that the principle of functional representation "does not proceed from the integration of the community, and then temper this with the representation of differences, but it proceeds at once from the postulate of disintegration into a large number of separate communities whose ultimate integration is thenceforward to be fabricated". Human affairs cannot be divided into watertight compartments, and it is disastrous when lines of division, which are in no sense marked, between one economic interest and another are accentuated. Even Professor Laski is opposed to the system of functional representation. He says, "The territorial assembly built upon universal suffrage seems, therefore, the best method of making final decisions in the conflict of wills with the community."<sup>36</sup> The legislature elected on territorial basis cannot act in an

33. Article 165.

34. Dunning, *op. citd.*, Vol. IV, p. 265.

35. Laski, H., *A Grammar of Politics*, p. 84.



irresponsible fashion. It is the creature of electoral will. Laski maintains that various interests within the State will receive adequate representation, if the legislature is made "to consult the organised wills of the community before it acted upon them")

(Functional representation, it is further maintained, is inconsistent with the principle of national sovereignty. The legislative assemblies are chosen to represent the interests of the nation as a whole and not the special interests of particular occupations or classes. The principle of vocational representation would force citizens to consider first of all their particular interests and ignore the national interests. "It would promote a struggle between different interests and forces, accentuate the feeling of antagonism between them, and undermine the sound doctrine that a man's interest in the welfare of the group, class or profession to which he belongs, should be secondary to his interest in the welfare of the whole society." It is suicidal, the opponents of functional representation emphasize, to encourage class-consciousness as it undermines the very basis of political organisation. A man is a citizen first, worker or peasant afterwards. Laski even questions the very basis of vocational representation. "Why," he writes, "a function, like that of medicine for instance, is properly relevant to the purpose of a legislative assembly? There is not a medical view of foreign policy, of the nationalisation of mines, or of free trade." It is, again, incorrect to emphasize that the industrial interest is dominant with many. Perhaps, majority of electors would desire to be represented in some other capacity than that of merely being workers in a given occupation.

Vocational representation, it is further argued, does not solve the problem of minority representation. Nor does it offer any protection to an independent voter who may not like to vote for a candidate put up by his profession or trade. Then, there is the practical difficulty involved in classifying a huge population on a vocational basis suitable for electoral purposes. There are sure to be enormous difficulties in determining to which group an individual may belong. It is not easy to arrive at any satisfactory system of classifying either industries or occupations. Finally, the system of vocational representation does not make any adequate provision for those who move from industry to industry.)

(The accepted opinion of the majority of political thinkers and statesmen is in favour of continuing with the system of territorial representation) "Weaver, miner, baker, teacher, each has his part to play in the commonwealth. But it would seem on the whole advisable that all these economic interests should combine to send to the Imperial Parliament a representative of the locality to which in common they belong, rather than by vocational representation to emphasize their class interests and exaggerate their economic antagonisms." (Some political thinkers suggest that the system of proportional representation in the form of single-transferable vote serves the purpose of vocational representation in essence.) The merit of this system is that it permits men to be represented according to their occupational interests, if these interests are considered dominant over other interests. But it does not force the voters to be so represented if other interests are deemed paramount.

## SUGGESTED READINGS

- Bryce, J. : *Modern Democracies*, Vol. I, Chap. VIII.  
 Cole, G.D.H. : *Guild Socialism Restated*.  
 Commons, J.R. : *Proportional Representation*.  
 Dealey, J.Q. : *Development of the State*, Chap. X.  
 Dealey, J.Q. : *The State Government*, Chap. XVII.  
 Garner, J.W. : *Introduction to Political Science*, pp. 440-448  
 and 489-516.  
 Garner, J.W. : *Political Science and Government*, Chap. XIX.  
 Hoag, C.G. and Hallet, G.H. : *Proportional Representation*.  
 Humphreys, H. : *Proportional Representation*.  
 Lakeman, Enid, James D. : *Voting in Democracies*.  
 Lowell, A.L. : *Public Opinion and Popular Government*.  
 Mill, J.S. : *Representative Government*, Chaps. VII-XII  
 (1890).  
 Ross, J.F.S. : *Parliamentary Representation*.  
 Seymour, C., and Frary,  
 D.P. : *How the World Votes*.  
 Shepard, W.J. : *Theory of the Nature of Suffrage*.  
 Sidgwick, H. : *Elements of Politics*, pp. 378-400.  
 Smith, T.E. : *Elections in Developing Countries*.  
 Willoughby, W.F. : *The Government of Modern States*, Chaps. XII,  
 XVI, XVII.

## The Legislature

**Three branches of government.** Since the time of Aristotle it has been generally agreed that political power is divisible into three broad categories. There is, first, the legislative power which formulates and expresses the will of the State. Being a representative assembly, the Legislature in a democratic government enacts the general rules of society in the form of laws. The laws of the State prescribe the manner in which people are expected to live in a politically organised society. Secondly, there must be some power to see that laws of the State are duly obeyed by all and there is no infringement. This is the work of Executive. There is, thirdly, the judicial power. The judges determine whether the law is applicable in a particular case or not. The judicial power determines "the manner in which the work of the executive has been fulfilled. It sees to it that the exercise of executive authority conforms to the general rules laid down by the legislature."<sup>1</sup> If the executive acts in excess of the power vested in it by law the judges may declare that the order issued by the executive is in excess of the authority given to it and accordingly *ultra vires*.

But the Legislature unquestionably occupies a superior place. In fact, the primary and the most important function of the State is legislative. The Executive and the Judicial departments cannot function till the Legislature has functioned. Law must exist before a judgment can be given or the Executive takes action. Every executive and judicial act involves primarily an enactment made by the Legislature. Gilchrist has compared the relation of the Legislative, Executive and Judicial departments to the major and minor premises and conclusion of a syllogism. He says, "The legislative authority forms the major premises; the judiciary the minor; and the executive, the conclusion."<sup>2</sup>

### FUNCTIONS OF THE LEGISLATURE

**Varying extent of functions.** The functions of the Legislature are not identical in every country. They entirely depend upon the form of government. If the form of government is unlimited monarchy, as it was in the Czarist Russia, the Legislature is merely a **consultative** body subordinate to the Executive for all practical purposes. Under a bureau-

1. Laski, H., *A Grammar of Politics*, op. citd., p. 295.

2. Gilchrist, B.N., *Principles of Political Science*, p. 293.



cratic form of government, as it existed in the Provinces of India before 1937, and persisted in the Centre till India became a sovereign State in August 1947, the Legislature is completely subservient to the Executive. A dictator, like Hitler or Mussolini, pays scant attention to the existence of a Legislature. Both Hitler and Mussolini suppressed the powers of the legislatures and ruled mainly by issuing decrees or ordinances. The German Parliament conferred upon the National Cabinet in 1933, in fact, upon Hitler himself, power for four years to make laws, conclude treaties, adopt budgets, and indeed to do, without check or restraint, "anything whatsoever, inside or outside of the constitution...."<sup>3</sup> But the power conferred on Hitler never came to an end during his lifetime. Even the Iron Chancellor Bismarck, who wielded in his time enormous authority, never approached the power placed in the hands of the Nazi chief.

But in a Parliamentary form of government, as it obtains in Britain and India, Legislature is superior to the Executive. The Executive is responsible to the Legislature for all its acts and Ministers remain in office only so long as they can retain its confidence. Parliament in Britain is sovereign. It plays a double role and combines the constitutional and the legislative powers. It is competent to make and alter the constitution and, at the same time, make ordinary legislation. In the United States of America, on the other hand, the powers of the Legislature are co-extensive with the Executive.

The functions of the Legislature, therefore, differ from State to State. There is no uniformity. The main functions of the Legislature may, however, be classified as follows:—

**Legislative Functions.** As stated previously, law is now regarded as the expression of the will of the people. The will of the people is expressed through representative assemblies and all other means of making laws have been swallowed up by the legislation. Legislation is, therefore, the most prolific and direct source of law. Again, laws must be consistent with the changing conditions of society and in harmony with the new social environments. Old laws which have become obsolete are repealed and new ones substituted in their place. Under a Cabinet form of government, the Executive has a direct hand in the making of laws. All public bills originate from the government. But in the Presidential system the Executive is not in direct touch with legislation. It only exerts its influence either through presidential messages or through members of Congress who belong to the President's party.

**Deliberative Functions.** Legislative functions consist of two kinds of work: law-making and deliberative. In fact, there can be no separation between the two. Both are parts of the legislative functions, although some writers treat them separately. They argue that the function of law-making, particularly drafting of a bill, is a skilled work which needs considerable experience, study and research. The amateurs make a bad job out of it when entrusted with this specialised function. The making of law should, therefore, be entrusted to a small committee

of experts while the actual work of deliberation should be the function of the whole Parliament.<sup>4</sup>

To make a law really the mirror of public opinion, it is necessary that it should not be made hurriedly. It needs proper thrashing so that its contents and ends may be considered from all points of view. For discussion two heads are better than one, and two hundred are better than two. In this respect legislature is par excellence a deliberative body. The term parliament, which may be used for a legislature, is derived from the French word **Parlement**, meaning meeting for discussion. (Legislature is a forum where thinking is done and as it consists of many persons representing numerous interests, various points of view, and different sections of community, all thinking is subjected to detailed discussion and searching criticism. For better and fruitful discussion every legislative assembly observes certain definite methods and rules of business called the legislative procedure.) There are, generally, three readings for every legislative bill before it is finally voted upon. The first reading comprises introduction of the measure only. There is no debate or discussion. After the Bill has been introduced, it is printed and members get its copies to be ready for the second reading. On a day fixed in advance, the Bill is read for the second time. This is a crucial stage in the life of a Bill. The supporters and opponents of the Bill participate in discussion and stoutly present their respective points of view. There is a general discussion and no amendments to the Bill are moved. Upon the conclusion of the debate votes are taken. If the majority votes in its favour, the Bill goes to the next stage. If it is defeated, it lapses.

After the second reading, the Bill automatically goes to an appropriate committee of the House. The size of modern legislatures makes it impossible for full consideration to be given to all measures by all members. Therefore the Committee system has evolved. (Here the bill is discussed, voted on clause by clause, and probably amended.) The committee may even seek information from any source with respect to any point, invite experts from outside and summon any one for evidence, both oral and documentary. (After the committee stage, it is referred back to the whole House for further discussion.) There are many other rules of procedure. (The objects aimed at are orderly and efficient dispatch of business, the prevention, on the one hand, of precipitate and ill-considered action, and, on the other, fruitless prolixity of debate.)

**Financial Functions.** We are well aware of the conflict between the Stuarts and Parliament in Britain. It was all about financial matters) and the principal means by which Parliament mounted to power was the power of the purse. The fact of representative democracy is the control and regulation of national finances by the legislature, and this is its most important function. It is a fundamental principle of public administration, and one which is nowadays generally recognised in all civilised countries, that no taxes shall be levied or expenditure authorized without the approval of the representatives of the people. The theory 'no taxation without representation' recognises the supremacy of the legis-

4. *Representative Government, op. citd., Chap. V.*

lature in raising revenues and incurring expenditure. In some countries, like the United States, war can be declared only by the consent of the legislature. This power is vested in the legislature obviously for the reason that war entails stupendous expenditure and the verdict of the representatives of the people must be taken regarding the justification of war and the expenditure which is to be incurred in fighting it out. In Britain, war may be declared by an executive act, but grants are made available by Parliament. Executive cannot sanction expenditure without parliamentary approval. In this way, the Legislature controls the domestic and foreign policy of the State.

The principal financial function performed by a legislature from year to year is the presentation, consideration, and authorization of the budget. Viewed in simple outline, a budget is the nation's annual statement of accounts which shows, on the one hand, estimates of financial expenditure and, on the other, a calculation of anticipated revenues. The financial year generally begins on April first and the estimates of the coming financial year are presented to the representative chamber of the legislature in the second or third week of February. The estimates are discussed by the legislature and the number of days allotted for their consideration vary between two to three weeks or even more. The debate gives an opportunity to the government to explain and defend their proposals and to the Opposition an opportunity to air their grievances or to criticise the general policy of Government.

**Administrative Functions.** Nowhere in the world does a popular assembly actually participate in administration. Its proper jurisdiction is that of superintendence and control. But in countries where the Cabinet system of government prevails the control of the Legislature over the Executive is direct and immediate.) The latter is responsible to the former for all its actions. Questions and interpellations are asked to seek information from the Government on matters of administration. If any act of Government is resented by the public, their representatives may move a vote of censure and condemn their action. If the Government abuse their trust or act in flagrant disregard of the public opinion, the legislature can expel them from office and virtually appoint their successors. Strict control of the Executive is enforced by the review of Government's policies involved in discussions of the Budget and the approval of proposed expenditure. If the Government fails to get supplies, it must quit office and make room for others who can carry the Legislative with them.

In the United States) the Upper Chamber of Congress the Senate, is vested with certain specific administrative powers. (The Senate shares with the President the power of making all federal appointments. Again, all treaties negotiated and concluded by the President are to be ratified by a two-thirds majority of the Senate. (The Senate also possesses, by usage, the power of investigating into various administrative scandals and cases of corruption.) The investigating committees so set up can summon witnesses, officials and non-officials, call for papers and documents, and seek any other kind of information which may be deemed necessary. In a Presidential type of government the investigating committees usefully serve the purpose of controlling the executive. Legislature's control over the executive, thus, keeps the government fully in



formed of what the country is thinking of, what it wants and especially of what it will not stand. Under a Parliamentary system of government control and responsibility naturally go together. Since responsibility of government means its resignation from office whenever the policy of government proves fundamentally unacceptable to the popular assembly, an obligation rests on the House to exercise a day-to-day control over the Ministry in such a way that fundamental disagreement between the Executive and the representatives of the people will be clear and manifest. If the actual and possible mistakes of the Government were not apparent the Government might become irresponsible. So important is the function of controlling the Executive that many statesmen would assign it to the Legislature as its first and foremost duty. Even Bagehot placed legislation last among the functions he allocated to Parliament. Taylor, on the other hand, considers it a bit odd suggestion. His opinion is that the very essence of Parliament is its power to make laws. "Indeed much of the force of the criticising power of the House," he says, "is derived from this fact: that it is a body which can, by means of passing laws, do anything it likes."<sup>5</sup> Laski does not support Taylor's opinion. To him (the function of legislation is) not the only function of Parliament. "Its real function is to watch the process of administration to safeguard the liberties of private citizens."<sup>6</sup>

**Judicial Functions.** The legislature in every country, generally, consists of two Houses. One is known as the Upper House, and the other as the Lower House. The Upper House in most countries performs certain judicial functions. In Britain, the House of Lords is the highest court of appeal. The Senate, in the United States, sits as a court of impeachment for the trial of the President and the Vice-President, while the charges of impeachment are preferred by the House of Representatives. Similarly, the Senate in France, according to the Constitution of 1875, was empowered to sit as a High Court of Justice for the trial of the President and the Ministers for high crimes. In India, either of the two Houses at the Centre can prefer a charge for the impeachment of the President. If the charge is preferred by the House of People (Lok Sabha), the Council of States (Rajya Sabha) investigates the charge. If the Council of States prefers the charge, then, the House of People investigates it. The impeachment succeeds when the House investigating the charge passes a resolution that the charge has been sustained.

**Constituent functions.** Legislatures have also constituent functions to perform. Parliament in Britain is both a legislative body and a constituent assembly. It can change or abrogate any law whatsoever and by the same procedure. Proposals to amend the United States' Constitution must be made by a two-thirds majority of the Congress or by a national convention which Congress calls at the request of the legislatures of two-thirds of States. Bills to amend the Constitution of India may originate in either chamber and passed by each House of Parliament by a majority of its total membership as well as by a two-thirds majority of the members present and voting.)

5. *The House of Commons at Work*, p. 126.

6. *Parliamentary Government in England*, p. 167.

**Electoral functions.** (Not only do Legislatures usually elect their own officers, but they may also elect some executive officials. The elected members of both Houses of Parliament in India form a part of the electoral college for the election of the President. The United States' Congress has electoral functions too. As a matter of routine, it meets in joint session every fourth year to count the electoral votes cast for the President and the Vice-President. If no candidate receives a majority of the electoral votes for President, the House of Representatives selects, each State voting as a unit, the President from among the candidates with three highest votes. When no candidate secures a majority of the electoral votes cast for the Vice-President, the Senate makes the choice from among the two candidates with the highest number of votes. The President of France is elected by the joint action of the two legislative chambers. The Swiss Legislature elects the judiciary, members of the Federal Council, and the head of the civil service.)

**Miscellaneous functions.** Parliament in India has the power to move for the removal of judges of the Supreme Court and of the High Courts on the ground of proved misbehaviour and incapacity, and the address for such a removal must be passed by a two-thirds majority in each House. In Britain judges can be removed only by the joint address of both Houses of Parliament to the Crown. Judges in the United States can be removed by the due process of impeachment.

Legislatures also work as organs of inquest or inquiries. They often appoint commissions of inquiry relating to agriculture and industry or to find out the causes of social unrest, violence or mob violence, etc. Such commissions of inquiry collect information, receive memoranda, hear evidence and make recommendations.)

In order that the executive may not interfere in the legislative branch, a good number of constitutional safeguards are provided. It chooses its own Speaker and other officers and adopts its own rules of procedure and business. Its members may not be arrested while attending sessions or travelling to and from them for any reason except the commission of crimes. They may not be punished for anything they say in debate except by the House to which they belong.

## ORGANISATION OF THE LEGISLATURE

**Unicameral and Bicameral Organization.** Law, according to Aristotle, should be "reason without passion". This statement involves two things. In the first place, it is essential that those who are entrusted with the duty of making laws should avoid the dangers of rash, hasty, and ill-considered legislation. A due amount of caution and reflection are the prerequisites of legislation. Passion is dangerous in law-making. Secondly, as laws are to affect all alike, it is necessary that Legislature should be a representative body of all the people representing numerous interests in order to secure the consent of all sections of opinion. Various means have been adopted to secure these ends. One of them is the manner of the organisation of the legislature.)

(When there is only one legislative assembly the system of organisation is called unicameral. When the legislature is organised into two

Houses it is called the bicameral system. It is almost a dogma of Political Science now that the legislature ought to consist of two chambers. Single chamber government is considered the apotheosis of democratic rashness. Some writers characterise government by a single chamber as visionary, "if not corrupt and violent", which usually ends in despotism. Sir Henry Maine expressed the opinion that almost any kind of second chamber is better than none. He said what ought to be expected of the second chamber is not a "rival infallibility but an additional security".

**Historical development of the Bicameral system.** The British Parliament is, in a very true sense, the mother of Parliaments. It constitutes the first successful example of a legislature in the modern sense and its most important feature is that it is bicameral in character. "It is safe to say," observes Willoughby, "that had it not assumed this form, there is little likelihood that this mode of organisation would now be so prevalent." It is, thus, of prime importance to know how the system of bicameral legislature came into being in Britain.

In Britain nothing is arranged. It just grows and like Parliament itself, the bicameral structure is also the child of chance and growth; the result of historical accident. As it was not a deliberate creation, no such thing as a deliberate weighing of the relative advantages of different types of organisation took place. When Edward I called his Model Parliament in 1295, all the different classes of people summoned to attend met in one single assembly. But afterwards they broke into three groups or "estates"—Nobles, Clergy and Commons—to hear separately the King's plea for money and "to make such response as they individually chose". Gradually, however, practical arrangements led to a different arrangement. The greater barons and the greater clergy, who were feudal lords and landholders too, had many interests in common and they began associating together in one body. The lesser clergy found attendance at Parliament very irksome. Moreover, they were jealous of their clerical privileges and preferred to make their money grants in their "Convocations". They soon ceased to attend Parliament altogether. Similarly, the knights, after a good deal of wavering, found their interests identical with the burgesses and finally united with them for all purposes. The result was the division of Parliament into two chambers; in one sat the peers, Temporal and Spiritual, in other representative Knights of the Shire and the representative Townsmen. How and when exactly this arrangement came about, nobody knows. It was accidental and the result of social and economic circumstances. By the close of the reign of Edward III this bicameral organisation seems to have been fully established. Thenceforward the distinction between the two Houses became political.

The next country to develop strong legislative bodies was the United States of America. Regarding the desirability of creating national legislature consisting of two chambers, there was little difference of opinion among the members of the Philadelphia Convention. The foremost reason which prompted bicameralism was the spirit of great compromise without which perhaps the union would not have come into being. The

7. *The Government of Modern States*, p. 335.

8. Adams, G.H., *Constitutional History of England*, pp. 194-195.



hitherto sovereign and independent States would not agree to the new administrative set-up unless their old status was preserved in one branch of the legislature and where they could be represented as constituent political units. On the other hand, the larger States would not agree to a plan of the new Constitution unless they were given adequate representation in proportion to their numerical strength. There were economic reasons too. The North, the more populous part of the country, was commercial in interest, whereas the South, the sparsely populated part, was agricultural. The division of legislature into two Houses based on two different principles of representation was in part influenced by these considerations in order to balance and harmonise the two distinct economic interests in the national government.

To these considerations must be added yet another. The Fathers of the Constitution had entertained the fear of the majority rule and they desired to set up Senate as a conservative check on the turbulence of democracy. And if it could prove an effective check on the radicalism of the popular House, then, it should not be a mere duplication of the latter both in its composition and powers. The propertied class had found another reason in the creation of the Senate. Their feeling was that the rule of the majority offered acute dangers, chief of which was the possible "exploitation of the propertied classes by those less favourably situated". Although it was thought that these dangers could be met largely through the adoption of the representative type of government, still it was felt that certain additional safeguards were desirable. "Such safeguards, it was believed, should be secured by providing for a bicameral legislative system, one of whose chambers would be more directly representative of property interests and be, thus, in a position to protect such interests."

But the historical circumstances, which created the adoption of bicameralism in the United States did not set a stage for its universal adoption. In fact, in the eighteenth and early part of the nineteenth centuries unicameralism was generally favoured. Benjamin Franklin was its enthusiastic advocate in the United States and it was largely under his influence that the legislature of Pennsylvania, under its first Constitution, was made unicameral. In Britain, at the same time, Bentham advocated for a single chamber legislature. In France, "reckless belief in popular sovereignty" overcame the theories of Montesquieu and Delolme, which suggested a bicameral system of commons and lords. The ideology of Rousseau was accepted and the Constituent Assembly conceded to the argument that sovereignty was indivisible and the nation was sovereign, and hence that its representative body could not but be one. A single chamber legislature was, accordingly, provided in the Constitutions of 1791 and 1793.

But public opinion soon went in favour of bicameralism and the countries which had previously adopted unicameralism abandoned it for the bicameral system. In Pennsylvania one chamber continued until 1800, when it was replaced by two chambers. In France two chambers were created in 1795, which remained in existence until 1784, when France again reverted to unicameralism. But this was only just for a

brief interval. Other States, like Mexico, Spain, Portugal, Naples, and many others, all abandoned it after trial for the double chamber system. In a few countries, for example, Norway and Israel, the legislature even now is organised as a unicameral body. Commonly, however, a legislature is composed of two Houses and it is a bicameral body.

**Arguments in favour of Bicameralism.** It will be evident from the foregoing analysis that the bicameral system did not originate because of any reasoned belief in its superiority from a technical standpoint as an instrument of legislation. In Britain, it was the result, in part, of the historical development of Parliament and in part of the affinity of economic interests between the two distinct classes of the people, the landed aristocracy and the common people. In the United States, many historical factors intervened and bicameralism was found valuable for purposes of compromise between the hitherto sovereign States, though here, too, the Senate was intended as the guardian of "property generally and especially of the landed interests, the Yeomanry of the State".<sup>10</sup> The same reasons prompted the German Empire. In France, the experience with single chamber legislature was not satisfactory and their proceedings "were marked by violence, instability and excess of the worst kind."<sup>11</sup> Other countries adopted it for giving expression to certain political principles that obtained then. And for a long time it had become axiomatic that legislature should consist of two chambers.

During recent years a great change has been witnessed in the theory and practice of bicameral system of legislature and this, too, began in Britain. While the struggle between the King and Parliament was continuing, there developed a struggle within Parliament as to which House should speak for Parliament in financial matters. The House of Lords never admitted the claim to sovereignty by Commons on financial matters, although by usage gradually the Lords acquiesced to the claims of the representatives of the people. But in 1860, the House of Lords began interfering in financial matters and in the beginning of the present century it made a bid to revive its powers by rejecting the proposals aiming to levy certain new taxes on landed property. The result was the passage of the Parliament Act of 1911, which not only confirmed the sovereignty of the House of Commons in money matters, but made it omnipotent in matters of ordinary legislation too. The position, today, is that while Britain continues to have a legislature that is apparently composed of two chambers, the existence of the House of Lords does not matter at all. If the House of Commons were to pass a law abolishing the House of Lords, there is nothing to obstruct it.

This action by Britain in radically diminishing the status of the Upper House as one of the co-ordinate branches of the legislature had a profound influence on those States which were compelled after World War I to adopt new political system or to modify their existing systems. Many States discarded bicameral legislatures altogether and those which

10. Observations of Chief Justice Spencer made at a convention held in 1821 to revise the Constitution of the State of New York. It is cited by W.F. Willoughby in his *The Government of Modern States*, p. 338.

11. Garner, J.W., *Political Science and Government*.

adopted them followed the example of Britain, the mother of Parliaments. In the United States, too, the Seventeenth Amendment to the Constitution, adopted in 1913, largely nullified the prime consideration that led to the original adoption of the bicameral system.

Unicameralism, however, could not persist for long and at present the bicameral system is almost of universal prevalence. But with the changes referred to above the force of arguments originally adduced in favour of the adoption of a bicameral system has been greatly weakened, if not entirely destroyed. To illustrate it, the first French Constituent Assembly in 1946, adopted the unicameral system. The second Constituent Assembly reverted to the system of bicameralism, but the powers given to the Council of the Republic were not even near to the weaker second chamber like the House of Lords. It was a Council for reflection, as one of the writers described it, and not a Council of action. There was nevertheless a strong body of opinion to the effect that bicameral system has certain intrinsic merits. To some extent bicameralism is based on a distrust of popular opinion and its expression in the popular House. Following are the main arguments generally advanced in support of bicameralism.

1. John Stuart Mill pointed out that the concentration of power in one single chamber makes it despotic. This means that all power has a tendency to degenerate, and if not checked by a rival chamber, it is likely to go beyond its limits. Lord Acton, accordingly, maintained that the second chamber is "the essential security of freedom". The necessity of two chambers was, thus, based, as Bryce said, on the belief that the innate tendency of an assembly to become hateful, tyrannical, and corrupt need be checked by another House.

2. Second chambers are defended on the ground that popularly elected representatives can be overhasty and they need checking by a less impulsive and more experienced body. "We need a mechanism that enables us to delay the first rough impulses of a body fresh from its contact with the electorate, and eager, in its inexperience, to experiment with every kind of novelty." / A popular chamber elected on the basis of adult suffrage is usually radical in its outlook. Its members are comparatively young and they are always keen to establish their mark by doing something radical and thereby ensuring their berth in the next general elections. Upper Houses are usually for longer terms and elected under conditions which make for greater conservatism among their members. Conservatism, the advocates of bicameralism assert, is needed to check the radicalism of the popular chamber and it is a brake of considerable political advantage. Moreover, when radicalism is injected with conservatism, it is reason without passion and this is what law really ought to be. The essence of the second chamber is that it should not be subject to the same impulses and the same pressures as the representative House. Bicameralism is, therefore, a necessary check upon hasty, rash and ill-considered legislation. It acts as a brake by revising the legislative activity of the popular House and there is a greater likelihood of temperate and deliberate discussion resulting in balanced, equitable and careful legislation.

3. Interposition of delay is needed to <sup>at</sup> crystallise public opinion on



all bills before they become laws. In fact, it is of considerable advantage that the decision of popularly elected chamber should be given a second thought and that, too, under conditions of calmer atmosphere in a chamber which is less susceptible to immediate popular pressure. Take, for example, the House of Lords. The Lords can afford to have full and free debates on issues which the Commons are too busy to discuss or which party leaders may consider too explosive to touch. By their debates the Lords prepare the public for the consideration of the important issues, educate public opinion, and make the government susceptible to public reaction. The House of Lords, thus, performs a useful function in influencing the people and the government. Reference of a measure to the second chamber after having been passed by the first provides sufficient pause for reflection and deliberation. Second chambers, accordingly, ensure that opportunity will always be given for a sober second thought thereby exercising a controlling, modifying, retarding, and steadying influence on legislation. There is careful scrutiny of legislation by both the chambers. The length of time that elapses between introduction in one chamber and final passage in both reduces the chances of the tyranny of the majority, haste and carelessness attendant thereto, and the ill-conceived legislation.

4. The system of bicameral legislature, it is claimed, is the correct barometer of public opinion. A single chamber may, before the expiry of its terms of office, grow out of tune and not keep in harmony with popular opinion. It does not hold any verdict from the electorate on questions of public importance which the legislature may be required to decide after the representatives have been elected. But this defect can be conveniently remedied, if there are two chambers chosen at different times or for different terms. There will be a constant flow of fresh public opinion under a bicameral system as the legislature reflects the popular will at all times.) The House of Representatives in the United States is elected for two years whereas the Senate is elected for six years, one-third of its members retiring after every two years. The House of People (Lok Sabha) in India is elected for five years while the Council of States (Rajya Sabha) is elected for six years, one-third members retiring after every two years.

③ 5. (The popular chamber in every democratic country is now flooded with work. Growth in the functions of the State has made legislation numerous, complex and specialised. Consequently there is so much rush of work that one chamber cannot have sufficient time to devote and to fully deliberate upon all measures.) Second chambers avoid congestion enabling them to concentrate on important measures. Not only non-controversial bills originate in the Upper Chamber and find an easier passage in the Lower Chamber after having been fully discussed and put into well-considered shape, but it also usefully does the examination and revision of bills after they have passed through all the stages in the Lower Chamber. This is now more needed since the time of the popular House is rationed and is almost on all bills obliged to act under special rules limiting debates, thereby curtailing the possibilities of free and full discussion. Upper Chambers generally function under no such limitations.

Their membership being reasonably limited and consisting of the best brains of the country, veteran statesmen and seasoned politicians with diverse experiences, there is intimate, practical and highly intelligent discussion and criticism.

6. Moreover, a finished Act of Parliament must be word-perfect. For if mistakes are made, the government may be involved in administrative difficulties or confusion or it may place the community in grave difficulties as a result of legally correct but unexpected and disturbing decisions of Courts. The second chamber is a valuable institution in this matter of spotting lack of clarity or doubtful matters of drafting.

⑤ 7. Bicameralism provides a convenient means of giving representation to different classes and interests and, thus, assures representation of minorities and for professional and vocational interests. Then, there are some talented persons in every country who are election-shy. In a system of bicameral legislature, they, too, can find an easy berth in the Upper Chamber. Take, for example, the Upper Chambers in India both at the Centre and in the States. The President is empowered to nominate twelve members to the Council of States who should be persons having special knowledge or practical experience in respect of such matters as literature, science, art and social services. Similar provision is made for nomination to the Legislative Councils, wherever they exist, in the States.

8. Second chambers are indispensable for States having federal form of government. The Lower Chamber in a federation is elected on the basis of population and is a representative chamber of the people as a whole. The Upper Chamber is representative of the constituent units. In several States the units are given equal representation in the Upper Chamber. Equality of representation is claimed to prevent the domination of the legislature by the bigger and more prosperous units. Bicameralism thereby secures the spirit of compromise among different interests, as it did in the United States, in the absence of which national unity would not have been possible.)

⑥ 9. The bicameral system protects individual freedom against legislative despotism. If there is no balancing of authority and all law-making were concentrated at a single centre, it is likely to become tyrannical in its transactions. Liberty, it is a simple maxim of democracy, if it is to be real and lasting, then, political direction of authority should not concentrate at any one place. "In framing a government which is to be administered by men over men," wrote Madison, "the great difficulty lies in this: it must first enable the government to control the governed; and in the next place oblige it to control itself." Bicameralism is a device to restrain and control the despotism of either one chamber or the other.

To sum up, bicameralism has been justified as a check on undivided power, rashness and irresponsibility, as a delaying and deliberative mechanism, as representing various interests in the community, as a reservoir of knowledge and wisdom, and as representing small and big states alike in a federation. It protects individual freedom against legislative despotism.

**Unicameral system.** As said earlier, a single chamber legislature was quite fairly favoured towards the close of the eighteenth century and during the early years of the nineteenth. This was essentially the result

of the theory of popular sovereignty which had then become the basis and watchword of democracy. It was believed that sovereignty rested with the people and it was indivisible and hence only a single chamber could represent their will. "The law," said Sieyes, "is the will of the people; the people cannot at the same time have two different wills on the same subject; therefore, the legislative body which represents the people ought to be essentially one."

But this could not last long and many countries which adopted single chamber legislatures originally abandoned it in favour of the bicameral system. It was generally held that single chambers "were characterised by instability, violence, and passion and that their actions were unbalanced and impulsive". It was consequently thought necessary to check this rash and unwise action by the more serene and balancing power of the second chamber. During recent years, again, the idea of a single chamber has been revived and it found favour with many political writers. It is maintained that unicameral system is simple and responsibility in this system can be definitely located. The bicameral system, in contrast with this, is complicated and responsibility is divided. When both the chambers are popularly elected and possess coequal powers, discord and division is inevitable. Division of responsibility means inaction, thereby paralysing the will of the people. When one House is the replica of the other, it has no utility, because "if the two assemblies agree", as Sieyes said, "the second chamber is unnecessary; if they disagree it is obnoxious". There is duplication of effort as both chambers seek independently to obtain the same information by debating the same questions with their elaborate rules of procedure. It is, therefore, suggested to co-opt specialists on the Select Committees of the popular chambers, which should examine the details of the provisions of the bill rather than to make legislatures bicameral.

A second chamber, it is asserted, "is a clumsy addition—a sort of fifth wheel on the coach", which prevents or delays the necessary and urgent transaction of business. In very many countries second chambers have proved citadels of reaction, retarding the forces of progress. Illustrating this point, Laski says that the House of Lords cannot fulfil the demands of democracy, because "where it is tempted to be active in defence is just where democracy is tempted to be active in offence". He argues for abolishing the House of Lords, and the critics of bicameralism unequivocally regard second chambers as destructive of national solidarity, creating deadlocks and frictions between the different sections and interests of the people.

It has been further maintained that there is no unanimity of opinion regarding the organisation of the second chambers. This disagreement is itself an argument against bicameralism. In countries which have two chambers there is much discussion about reconstituting them. The House of Lords has always been condemned to be out of tune since it represents no one except the peers who form a class by themselves. The method of nomination of the members of the Canadian Senate has all through been subjected to serious objections. The utility of the second chamber in a federal State has also been questioned. It is maintained that the representatives of the constituent units of a federal



tion now vote on party lines rather than as representatives of their respective regional governments. There is, as such, no use in giving the constituent units separate representation through second chambers. And the minorities get better protection from constitutional safeguards than from doubtful representation through second chambers.

It is also maintained that legislation passed by a single chamber is neither hasty nor ill-considered. Almost every measure that becomes law is the result of a long process of discussion and analysis. In fact, every modern legislature takes its cue, while making laws, from the opinions expressed in the press and on the platform. Such being the case, there is no need to give unnecessary duplication to deliberation and delay the much-needed legislation. Nor is there any truth in the assertion that bicameral system protects legislative despotism. There are many other safeguards, like the suspensive veto of the executive, and a second vote in the same chamber after some interval, against the so-called despotism of a single chamber.

Finally, double chamber system, its opponents maintain, duplicates work, leads to delay in action and is an unnecessary burden on national exchequer. Laski and many other writers, therefore, conclude that a single chamber assembly seems best to answer the needs of the modern State.

Here is a resume of the comparative advantages for unicameralism and bicameralism:

#### **For Unicameralism**

##### **A Single House:**

1. Permits speedy action.
2. Avoids obstruction of the will of the people.
3. Permits clarity of responsibility of the Cabinet in a Parliamentary system of government.
4. Reduces duplication and confusion of responsibility relating to legislation.
5. Adds to the quality and prestige of the legislators through absence of conflict.
6. Is less expensive and ensures speedy transaction of business.

#### **For Bicameralism**

##### **Two Houses:**

1. Provide a check on hasty and ill-considered legislation.
2. Avoid despotism of a single chamber.
3. Help the public opinion to crystallise by interposing delay.
4. Reflect the popular will at all times and there is no time lag.
5. Help divide the work load.
6. Do useful and careful revision of legislation.
7. Allow representation to different classes and groups.
8. Account for the necessity in a federation.
9. Protect individual freedom against legislative despotism.

**Conclusion.** Bicameralism is now the well established and essential feature of a representative democracy. There is no doubt that genuine bicameralism, if the Upper House does its proper job of being a House of review and reconsideration, slows down the legislative machinery and tends to render more difficult radical reforms and changes. Yet, bicameralism is based on an enduring principle that resolutions of government which have widespread results need a multitude of counsellors. Two Houses are, accordingly, more advantageous as deliberation and solemnity strengthen the prospect of obedience and acceptance. But if second chambers are to do their job, they obviously must not be the carbon copies of one another. They should differ in their composition, method of election, tenure and, indeed, in powers. The Upper Chamber is intended to act as a brake, but not too tight a brake. Its necessary function is to resist and not to persist. The more popularly elected chamber must be the final determining authority. This is precisely what representative democracy demands.

### STRUCTURE OF LEGISLATIVE BODIES

**Composition of the Upper Houses.** Granting the utility of a delaying authority and a desire for having a multitude of counsellors for discussion, criticism and argumentation, controversy centres round the composition of the two chambers, designated as **upper** and **lower**, as well as **first** and **second** chambers to distinguish the two Houses. These terms suggest that the upper or the first chamber is of great significance than the lower or the second chamber. But this is not exactly correct. In the matter of constitutional powers the so-called **upper** or **first** House (is in all cases,) except the American Senate, (the weaker of the two) (Its functions are secondary) and it is not always a representative chamber. (It is only a historical legacy that the past name is retained) and is called an **upper** or **first** House.

It must be at once said that a really satisfactory formula relating to the composition of the upper Chambers is hard to find. The upper chambers in modern States exhibit considerable diversity in their structure and usually contain important survivals of historical development. "In qualification of their members and in the methods by which these members are chosen they often show traces of the class that preceded modern democracy, and on the basis of their representation, especially in federations, they indicate the historic units by whose combination the state was formed." (The following are the most important methods by which members of Upper Houses are selected. Many States combine two or more of these methods.

The first is the hereditary principle as it is obtainable in Britain. The House of Lords essentially consists of hereditary peers and they account for more than ninety per cent of the total membership of the whole House.) How did it come about? It was a historical chance. There is no evidence to show that the Kings had ever a mind to create peerage of a hereditary character. It was, however, a custom that a King, whenever he summoned a Parliament, would send for the same peers who had sat in an earlier one, or if in the meantime they had died, for their eldest sons. In course of time custom became a right

and a seat in the House of Lords descended from father to eldest son, just as the family estate under the law of primogeniture.

(The remaining membership of the House of Lords is non-hereditary and includes the Lords Spiritual, the Law Lords appointed for life, Peers and women Peers appointed for life, and the Princes of the Royal blood. But the very idea of a hereditary chamber is repugnant to a democratic age, and it can be safely predicted that no civilised country will venture to deliberately bring it into being.) If the British people were themselves to sit together to re-fashion the whole of their political machinery, the first to disappear would be the hereditary House of Lords. It is really to put democracy to shame that more than ninety per cent of the Peers should sit in their places because their forefathers sat before them. "The idea of hereditary legislators," wrote Thomas Paine, "is as inconsistent as that of hereditary judges or hereditary juries, and as absurd as a hereditary mathematician or a hereditary wise man, and as ridiculous as a hereditary poet laureate." Serious efforts have been made to abolish the hereditary character of the House of Lords, though without any tangible results. (But even the Peers themselves are now agreed upon the imminence of some change in the composition of the House of Lords.) (The principle of appointment for life and the inclusion of women Peers are valuable indications of the desired change.)

(The second is the principle of nomination. The members are appointed to their office by the executive either for life or for a given period. The method of nomination has one advantage. The process of popular election does not always result in the selection of the ablest and upright men. There are in every country many talented men who are reluctant to seek election because they cannot withstand its turmoils and put themselves in the full glare of publicity and criticism. (The system of nomination enables such distinguished men to participate in public affairs without subjecting themselves to the rough and tumble of an electoral campaign. But a chamber composed of nominated members is not a representative chamber and, accordingly, it lacks the authority possessed by the popular House. Moreover, nomination does not always result in the selection of talent and ability. Favouritism and services rendered to the party in power are the main criteria of nomination. The power of nomination is, therefore, likely to be abused. The best example of a nominated chamber is the Canadian Senate.) "Senatorship has been invariably regarded," writes Professor Dawson, "as the choicest plums in the patronage basket, and they have been used without compunction as rewards for faithful party service." The result is the low regard in which the Senate is popularly held. In fact, (the Canadian Senate hardly commands its own confidence.) (It is merely a recording body and it hardly disagrees with the Lower House or opposes any public bill. Sir George Foster in the course of a debate remarked: "Who on the street asks to know what is the opinion of the Senate upon this or that question? Who in the press really takes any trouble to know whether the Senate has any ideas, and if so, what they are upon any branch of legislative concern, or upon conditions which require the best and most united work of all in order to arrive at a successful conclu-



sion." It is, therefore, difficult to see any solid value in a body of this kind.)

Two methods in the election of an Upper House may be adopted: direct elections and indirect elections. Directly elected Upper House may be found in federal States like the United States of America and Australia. The U.S. Senate is composed of 100 members: two senators being returned by each one of the 50 States. The Australian Senate has 60 members, the six States of the Commonwealth returning ten members each on the general ticket system. The main difficulty in the case of directly elected upper chamber is that it becomes a mere duplication of the Lower House. Being a representative chamber its members cannot afford to disregard the wishes of their constituents. Even the most courageous and the honest must keep a weather eye on popular feeling. Moreover, when both the Houses are directly elected one becomes the replica of the other and it leads to chronic constitutional deadlocks as both the chambers are of equal importance and stand on an equal footing.

The Council of States in India is indirectly elected. The French Council of the Republic, under the Fourth Republic, was also indirectly elected. The American Senate, too, before 1913, was an indirectly elected chamber. Laski, who is a supporter of unicameral legislature, is of the opinion that "of all methods of maximising corruption, indirect election is the worst".<sup>12</sup> He further says, "If such a chamber is, at the time of its selection, hostile to the government of the day, it is destructive of the quality of the work, while if it is favourable, it is probably superfluous."<sup>13</sup>

*Conclusion* It is not, however, easy to suggest a satisfactory method of constituting Upper Chambers. Bluntschli said that distinction between the aristocratic and democratic elements in the State could not be ignored. To allow representation to only one of these elements was to do injustice to the other. John Stuart Mill proposed a second chamber constituted on the principle of political experience and training. If one is the people's chamber, the other should be a chamber of statesmen—a council composed of all living public men who have passed through important political offices or employments. Such a chamber, Mill added, "would be not merely a moderating body, or a simple check, but also an impelling force."

Another method proposed is one in vogue in Norway and recently advocated by Lees Smith. The second chamber, according to this plan, would be a small body elected by the Lower House and its sole function would be to postpone and to revise.<sup>14</sup> The best method is, perhaps, the one recommended by Sidgwick.<sup>15</sup> His ideal is the combination of nomination and indirect election. Indirect election, he said, gives to the House a representative character to some extent and nomination provides an opportunity to bring talent and experience in the legislature

12. *A Grammar of Politics*, p. 30.

13. *Ibid.*

14. Lees Smith, *Second Chambers in Theory and Practice*, p. 249 f.

15. *Elements of Politics*, p. 473 f.

whose discussions may wield great influence on the electorate. (The composition of the Council of States in India fulfils both these conditions.) The Council of States (Rajya Sabha) consists of not more than 238 members representing the States and Union Territories. The representatives of the States are chosen by the elected members of their Legislative Assemblies. The method of election is, accordingly, indirect. In the case of the Union Territories members are chosen in such manner as Parliament may by law determine. The remaining twelve members are nominated by the President to represent literature, science, art and social service. Somewhat similar are the provisions of the Constitution of the Union of South Africa which empowers the Governor-General-in-Council to appoint eight senators in addition to the thirty-two who are indirectly elected. The Italian Constitution makes all former Presidents of the Republic senators for life and permits the President to appoint as senators for life five other Italian citizens "who have brought renown to the country by merits of the highest order in the social, scientific, artistic or literary fields". In the United States, too, it has been suggested that all ex-Presidents be given a life-time seat in the Senate. The proposal emanates with a view to bring congressional-executive relations closer, but the underlying idea to make the Upper Chamber a reservoir of knowledge is also there.

**Lower House.** The development of lower chambers has coincided with the development of popular representation. Since they usually do not have historical antecedents as old as those of the upper chambers the Lower Houses are usually uniform in their basic structure. Qualifications of a relatively simple nature for members, as compared with those required of members for many of Upper Houses, are indicative of the popular nature of the Lower Houses. To this may be added the fact that members of these Houses are almost universally elected by a direct vote of the people who reside in different territorial constituencies. The membership of the Lower House is greater than the Upper House. All this accounts for the primacy of the Lower Houses and relegation of the Upper Houses to an insignificant position.

Since 1945, the British House of Commons consists of 630 members, the House of the People in India consists of not more than 500 members directly elected from the States and not more than twenty members to represent the Union territories. Till recently the membership of the United States' House of Representatives was "frozen" at 435. The entry of Alaska, as forty-ninth State, and Hawaii, as the fiftieth, now makes it at 438. The National Assembly of France, under the Fourth Republic, consisted of 580 members. The number, thus, varies from State to State. But what should be the advisable number? Viewed solely from the operative standpoint, a relatively small chamber has undoubted advantages over a large body. A small knit assembly attains coherence above all and helps to establish definite responsibility. But a small House cannot, from its very nature, have the same representative character as has the large House. If the basis of representation is population, the constituency electing a representative must be larger in the case of a small House than in the case of a large one. The bigger the number of the representatives the smaller need the district be. "This

conduces to," says Finer, "heightened representativeness. For good law representativeness is of cardinal importance; all men get the sense that they are being duly heard in the uses of authority."<sup>16</sup> Dr. Finer would strongly favour the increase in size of the Lower House to eight hundred in all modern democratic States.

The length of term of members usually varies from three to five years. It is only two years for the United States House of Representatives. In the United States, as John Adams, and the author of the *Federalist*, tells us, there was current maxim with the new States that "where annual elections end, tyranny begins". Connecticut and Rhode Island were half-yearly, and the rest, save South Carolina which was biannual, were annual. The House of Commons in Britain and the House of People (Lok Sabha) in India are elected for five years. But both are subject to dissolution and, accordingly, the term of office may come to an end earlier than the one prescribed by law. Dissolution involves new elections.

From the standpoint of representation, it is desirable that the term of legislators should be relatively short. From the standpoint of efficiency alone a longer term is advocated. But an efficient government is no substitute for self-government and it is claimed that legislative term should neither be too long nor too short. If it is too long, the legislature cannot claim to be the mirror of public opinion. There will be time lag. If the term is too short, the legislators will not have the time and opportunity to gain requisite knowledge and experience which their arduous and technical job requires. Nor shall they be in a position to develop a legislative policy, and establish legislative traditions to enable the chamber to function properly and efficiently. It will be a race with time.

The practice of various States is to fix the term at four or five years. The supporters of this desirable medium claim that it permits the legislator to become proficient and he can devote adequate attention to legislative problems. It also reduces the insecurity attending frequent elections with their demands on time and money. According to Laski, "the best period of power for a legislature seems to be not less than four, not more than five years."<sup>17</sup> Dr. Finer would rigidly fix it at four years. He says, "My judgment that a four years' term is a modern necessity is reinforced by reflection on the obvious mounting trend to national planning. A longer term than four years is inadvisable because the broader the activity of government, especially when it is (as much must be) still of an experimental nature, the more opportunities ought there to be for reference back to the citizens. The way back must be kept open. The more massive and complicated the administrative apparatus, the more ought it to be subjected to the periodical lashing waves of popular opinion."<sup>18</sup>

The two chambers should differ in principle. Where the structural principle of both Houses of the legislature is the same much of the value of the bicameral system is lost. If the two Houses are identical in con-

16. Finer, H., *The Theory and Practice of Modern Government*, p. 390.

17. Laski, H., *A Grammar of Politics*, p. 342.

18. Finer, H., *The Theory and Practice of Modern Government*, p. 390.



stitution, then, the second is a mere duplication of the first, and the advantages of the additional chamber are questionable. "If the two Houses were elected for the same period and by the same electors," observes Lieber, "they would amount in practice to little more than two committees of the same House; but we want two bona fide different Houses representing the impulse as well as the continuity, the progress and the conservation, the onward zeal and the retentive element, innovation and adhesion, which must ever form integral elements of all civilisation. One House, therefore, ought to be large; the other comparatively small, and elected and appointed for a longer time."<sup>19</sup> What is required in order to realise the true benefits of the bicameral system is that the two chambers should be differently composed and should rest on dissimilar bases. The members of one House must enjoy longer term of office, they should represent a larger constituency, they should be subject to higher membership qualifications, and they might well be chosen in a different manner and by a differently constituted electorate.

*It is a sign of democracy*

**Powers of the two Houses.** In the process of law-making the theory is that the two Houses, in a system of bicameral legislature, are generally equal and co-ordinate. A bill may originate in either House and pass through the same legislative procedure in both the Houses before finally voted upon. No bill can become a law without the consent of both the Houses. Either House may propose amendments to a bill and they become valid by receiving the consent of the other. In the case of bills relating to the raising and spending of money, the powers of the two Houses are generally co-ordinate, but not co-equal. The Lower House possesses supreme control over the finances of the State, the maxim being that representation and taxation go together. The representatives of the people, it is held, are the final arbiters over all matters of income and expenditure of the State. All financial bills, accordingly, originate in the Lower House and its power is decisive. The British House of Lords may not originate, amend or reject a money bill. In France the powers of the Senate, under the Constitution of 1875, were co-equal with those of the Chamber of Deputies, except that the money bills originated in the latter. The Senate might amend or reject them. But in reality the Senate was invariably in a position of inequality and the supremacy of the Chamber of Deputies was an established fact. Under the Fourth Republic financial legislation was initiated in the Assembly alone and it was transmitted to the Council of the Republic for its opinion. But the Council was required to give its opinion within the same span of time as the Assembly had herself taken. Therefore two months' span which was required in the case of ordinary legislation for the opinion of the Council of the Republic, was not necessary with regard to financial bills. In India money bills can only originate in the House of People (Lok Sabha) and the Council of States (Rajya Sabha) must send its recommendations thereupon within fourteen days of receipt. If it does not return the bill within fourteen days or returns it with recommendations which are not acceptable to the House of People, the will of the House of People prevails. In Britain the House of Lords can delay a money bill for one month. In the United States, on the other hand,

*with regard to financial bills*  
*complete authority of their determination in all on financial legislation*

19. As cited by J.W. Garner in his *Introduction to Political Science*, p. 439.

the Senate, though forbidden to originate bills for raising revenues, possesses the undisputed power to amend or reject them.

But There must be a sharp distinction between the powers of each House of the Legislature. The differences in powers will, of course, depend upon the mode and composition of the Upper House. If the Upper House is hereditary or nominated, as in Britain and Canada, its powers are considerably limited. But if it is an elected House, it stands on a footing of equality with the Lower House as far as the law of the constitution is concerned. The march of democracy, however, has decidedly made the Lower House a "predominant partner".<sup>20</sup> In the event of conflict between the two, the verdict of the House which is more representative of the people must ultimately prevail. The case of the American Senate, which was deliberately designed to enjoy greater powers than the House of Representatives, is quite exceptional. (Wherever both the Houses possess co-equal powers much of the value of bicameralism is lost. Identical powers mean a sheer duplication and the advantages of such a system of legislature are questionable. The Upper House, for all intents and purposes, is a revising body. Being a chamber solely created for purposes of reflection and not action, it is intended to exercise a moderating influence to the radicalism of the Lower House. It may serve as a brake, but not too tight a brake which may lead to open rupture between the two Houses. If public opinion supports the attitude taken by the upper chamber, then, the Lower House would automatically mend itself otherwise the former should respectfully bow to the wishes of the representatives of the people. The function of the Upper House, in fine, is to resist but not to persist)

It has long been an almost universal practice to confer upon the Upper Chambers certain special powers which the Lower Houses do not possess. Nearly in every country upper chambers are vested with the exercise of judicial powers. The House of Lords is the highest court of appeal in Great Britain. In the United States, the Senate serves as a court for the trial of impeachment cases. (The French Constitution of 1875, empowered the President of the Republic to dissolve the Chamber of Deputies with the consent of the Senate. In the United States the Senate exercises certain specific executive powers. All Presidential appointments must have the assent of the Senate, all treaties require its ratification.)

## DIRECT LEGISLATION

Need for direct legislation.<sup>21</sup> The representative democracy during recent years has been subjected to a great deal of criticism. This is primarily due to the popular belief that legislatures play excessive party politics and the welfare of the people as a whole is generally discounted. The whole machinery of the government is so geared as to serve the party ends and the party politics are really the politics of the party bosses. It is their will and their decisions. Both the legislators and the adminis-

20. Refer to the controversy between the House of People and the Council of States in India.

21. Refer to Anup Chand Kapur, *The Government of Switzerland*, Ch. VII.

+ make one of the replica of the other and the sheer duplication of institutions resulting into friction, deadlock, irresponsibility, inefficiency and waste in time, energy and money.

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trators have nothing to decide and determine. In order to mitigate the rigours of the party discipline and the corrupting influence of the representative system, the direct participation of the people themselves in the affairs of the government is urged. (It is advocated that the people should have a direct say in the enactment of laws, and that they should have the power to recall the officers of the government who fail in the adequate discharge of their duties. The latter takes the form of **recall** and the former expresses itself in the **referendum** and the **initiative**. Both these devices provide the people an opportunity to express their real will on matters relating to legislation and are intended to vindicate the sovereignty of the people.)

Direct legislation is the distinctive contribution of Swiss democracy and it is as old there as Swiss history. It is still kept alive in some of the **Cantons**, but in others it has been replaced by the **referendum** and the **initiative** as a substitute for personal attendance of the people at the annual meetings of the **Cantonal** assemblies. The referendum was generally used from an early period by states in the United States for the ratification of the new constitutions and subsequent constitutional amendments. Their use for legislative purposes spread to the United States in 1898. Now nearly all the States use some form of the referendum, a good number of them permit the use of initiative and referendum on local level; and more than half the States provide for statutory and constitutional initiative. The turn of the century brought direct legislation into several European States too. The Constitution of the USSR also provides for referendum on legislative measures on the initiative of the Presidium or on the demand of the Union Republics, although it has never been invoked.

**The Referendum.** Literally the word <sup>(the</sup> referendum means "must be referred". (As a concept of Political Science it means the process by which the verdict of the people is sought on a proposed law or constitutional amendment on which the legislature has already expressed its opinion. If it is <sup>accepted</sup> ~~raised~~ by the required majority of popular votes, it becomes law. If it is rejected, the measure is given up) the underlying idea being that a law must be the manifestation of the will of the people, and every law passed by the representative assembly should be submitted to the people for their final approval.

The **referendum** may be of two kinds: (1) facultative or optional, and (2) compulsory or obligatory.

When a law, after it has passed through the legislature, is submitted to the people for their acceptance or rejection on a petition from a specified number of citizens, it is known as the **optional** or **facultative referendum**. (If the majority vote is in the affirmative, it becomes a law otherwise the decision of the legislature stands reversed) (In Switzerland a petition for facultative or optional referendum is required to be made by 30,000 citizens or the legislatures of eight **Cantons** for ordinary law unless the Federal Assembly declares the matter urgent.

In the case of **compulsory** or **obligatory referendum** all laws of specified type must necessarily be referred to the people for their acceptance or rejection before they can become laws.) The obligatory form is



obviously more democratic, for it requires expression of popular opinion on every law. In Switzerland and Australia, all constitutional amendments are subject to compulsory or obligatory referendum. In some of the Swiss Cantons even ordinary laws are compulsorily referred to the people for their opinion.

**Arguments in favour of Referendum.** 1. The principle of popular sovereignty, it is maintained, finds its real expression in direct legislation. In a representative system genuine public opinion is unobtainable, for it is moulded and shaped by the partisan influences of the press, the platform and the propaganda. The referendum, on the other hand, (is the surest method of discovering the real wishes of the people and is, therefore, an excellent barometer of public opinion.)

2. The advocates of direct <sup>R</sup>legislation claim that a citizen knows better than his representatives what can serve him the best and when he is required to express his opinion thereupon by approving or rejecting the legislation, it would enhance his interests in the public affairs. A law, which comes direct and straight from the people, carries with it fuller moral authority and commands unquestioning obedience than a law made for them by their representatives.

3. The referendum <sup>et</sup> minimises the <sup>sole and</sup> importance of political parties and discourages partisan spirit. It is a popular check on the vagaries of the legislature and the political machine. The frequent rejection by the people of measures passed by the legislature shows that the latter does not always know or give effect to what has proved to be the real will of the people. It ensures, at the same time, that laws opposed to the popular will have no chance of being enacted. The referendum, as a matter of fact, puts a veto in the hands of the people.

4. The referendum reduces the political high-handedness of the majority party. Under the representative system a law is usually what the majority party in the legislature wishes it to be. It seldom represents the will of the minority parties. If it is referred to the people before it can be finally enacted, the minorities do get an opportunity to adequately express their opinion and to muster strong their opposition, and, if possible, to negative it. This is real democracy.

5. There is no time-lag in direct legislation. "Direct legislation", says Bryce, "helps the legislature to keep in touch with the people at other times than at General Election and in some respects a better touch, for it gives the voters an opportunity of declaring their views on serious issues apart from the destructive or distorting influence of party spirit."

6. When the people feel and realise that they are the real legislators, their patriotism and their sense of responsibility are fully stimulated. Direct legislation has more educative value than the representative system. (When the people know that they themselves are to make and unmake laws, they are prompted with a keener and more active interest in public affairs. This is the true price of democracy.)

7. The process of direct legislation is conservative in character. The people will seldom introduce radical changes when they themselves know that they are the arbiters on legislation. They know that laws,

if need be, can be easily adjusted to their needs and requirements. They will, accordingly, refrain from making sweeping changes.

8. The referendum, it is maintained, (is the best means of resolving deadlocks between the two Houses of the legislature. In the Australian Constitution direct legislation is recommended as a device for breaking deadlock between the two chambers.)

9. Finally, as Bryce says, "There must somewhere in every government be a power which can say the last word, can deliver a decision from which there is no appeal. In a democracy, it is only the people who can thus put an end to controversy."

**Arguments against Referendum.** Those who are against direct legislation assert that the working of referendum shows that its advantages have not been realised in countries where it has been experimented, except in Switzerland. Bryce concluded that while Swiss were well qualified by intelligence and knowledge of public affairs it was, however, difficult to say that it had unqualified success in other countries as well. Dr. Finer thinks that direct legislation has done little good and its experience "would, perhaps, warn us not to accept direct legislation as a remedy for the defects of a parliamentary government. It improves nothing; neither the laws nor the people. It disturbs without providing solutions."

Following arguments may be examined in this connection:—

1. One of the chief objections against the referendum is that it has undermined the prestige of the legislative assemblies and has adversely reacted on the quality of membership. When representatives know that ultimately their efforts may be reversed by the process of referendum, they will take little interest in the discharge of their legislative duties. If the measure succeeds at the popular vote, the credit for it goes to the people and not to the legislature. If it does not succeed, the blame goes to the legislature. The status and authority of a legislature must suffer with the result that the people become less deferential towards it. Bryce, in summing up the effects of direct legislation on the legislature, says: "Its sense of responsibility is reduced and it may be disposed to pass measures its judgment disapproves, counting on the people to reject them, or may fear to pass laws it thinks needed lest it should receive a buffet from the popular vote."

2. The man in the street is not adequately qualified to form and deliver an opinion upon many subjects of legislation particularly when legislation has become so (technical and complicated). A simple 'yes' or 'no', as referendum requires, does not indicate the real will of the people. "The difficulty, in fact," as Laski points out, "which direct government involves is the final difficulty that it is by its nature too crude an instrument to find room for the nice distinctions inherent in the art of government." The making of laws requires special training and experience which the people at large cannot possess. Nor can they have the knowledge necessary to enable them to precisely appreciate the implications involved in the proposed legislation. (The interests of the people

*which are highly +*

are really safer in the hands of the representatives chosen for their talent and maturer judgment than when submitted to the hazards of a popular vote. All legislative measures are minutely discussed and deliberated on the floor of the legislative assemblies. Amendments and alterations are made in the light of discussion and knowledge of new facts. But "you cannot amend and alter when your legislative assembly consists of millions of members". The people must accept or reject the bill, no amendments are possible. The vote must be given for the whole bill. "It is an appeal from a court which has the makings and some of the equipment of a wise legislature, to all the crudities of a majority vote."

3. One of the criticisms against direct legislation, and really a cogent one, relates to the small size of the votes cast, at a referendum. It is maintained that the result of the ballot does not fairly represent popular opinion, because in most cases the opponents of the measures go to the polls in larger proportion than its supporters. The number of large abstentions at a referendum also proves that many a voter either cares little for his civic duties, or knows his unfitness to perform them.

4. Moreover, when people are frequently asked to cast their votes, they develop "electoral fatigue" and psychologically abstain from voting. The result is that the decision arrived at is invariably that of a minority of the citizens and it becomes difficult to know whether there is any public opinion at all on the question.

5. The referendum sometimes involves unnecessary and harmful delay in passing many laws of vital national importance. All this takes away the educative value of the referendum. When citizens do not interest themselves in public affairs, direct legislation becomes a farce.

6. When people cast an affirmative vote and the law is ratified by a small majority vote, as it happened on the question of Swiss Federal Penal Code, and of the Federal Economic Articles in 1938 and 1947, with a majority of only 53 per cent in both the cases, the moral authority behind the law may suffer more than would be the case had opinion been nearly equally divided in the Legislative Assembly. In countries, where direct legislation does not exist, a law passed by representative legislatures is accepted in a normal course and no one cares to enquire what was the majority that passed it. It comes in the regular way from the usual organ of the people's will and it is accepted by people in the usual way. But when it goes to the popular vote everyone is keen to know the majority that passed it. Those who opposed it carry on their opposition openly as they feel aggrieved to have been overridden by a negligible majority.

7. There is no justification to hold that direct legislation lessens the evils of party system. As a matter of fact, political parties become more active when frequent votes are to be taken. The referendum accentuates political rivalry and partisan spirit which, in a parliamentary form of government, may prove embarrassing to the party in power.

8. Finally, "the most comprehensive but also the vaguest argu-



ment," says Bryce, "adduced against the referendum is that it retards political, social and economic progress." Sir Henry Maine developed this point in his book, *The Popular Government*, in 1885, and it particularly impressed Englishmen who had always associated masses with conservatism. But it is not supported by Swiss experience. It is true that prejudice or undue caution has in some cases delayed the progress of economic or social reforms which the Federal Assembly proposed, but no general harm has followed in Switzerland from that conservatism.

All told, one is disposed to agree with Professor Laski <sup>of whom I now generally believe</sup> that direct legislation has not any special contribution to make to our problems. Dr. Finer suggests that "we should all be better served if our concern were fixed upon the reform of the party system; we should strive, then, to make the parties more responsible-minded, more sensitive, more masters of the social sciences." (Even the question of referendum, he concludes, is the question "of the quality of the country's political parties.") And if it has admirably succeeded in Switzerland it is due to the tranquilizing influence of Swiss party system. Politics in Switzerland is conducted almost without regard to party leanings. There is no professionalism in politics and damagouges do not find favour with the Swiss people.

**The Initiative.** The referendum aims at referring to the judgment of the people measures considered and passed by the legislature. But this device of direct legislation alone has not been considered sufficient to remove the defects of representative system. The advocates of direct legislation assert that it is the inherent right of the citizens to propose legislation and when ratified by the proper vote, it must become law <sup>he wants</sup> no matter even if it has been disapproved by the legislature. Such a device of popular legislation is called the **initiative**. By this process, it is claimed, a voter can make his influence felt in those cases where the legislature may not agree to adopt a constitutional amendment or a law.

The initiative is very often erroneously compared to a **petition**. But both essentially differ from one another. A petition is a mere popular submission made to the legislature suggesting the desirability of enacting a particular kind of legislation. The legislature may or may not act upon such a petition; it is not binding on it. But the initiative is the vindication of the inherent right of the people to propose legislation without regard to the opinion of the legislature, and even against its wishes. It is, accordingly, mandatory on the legislature to consider all popularly initiated legislative measures. If the legislature does not approve them, but the popular vote accepts them at a referendum they become laws.

The initiative may also take two forms: **formulative** and in **general terms**. When the demand is couched in general terms, it is the obligation of the legislature to draft, consider and pass the law as desired by the required number of citizens, subject to the ratification of people. If the proposal is **formulated** in the form of a bill complete in all respects, it is the duty of the legislature to consider the measure as it is.)

The initiative obtains in Switzerland, federal and **cantonal**. For constitutional amendment, the petition for initiative may be made by 50,000

citizens. There is no federal initiative for ordinary laws, and the result is that the constitutional initiative has been used to place all kinds of matters in the Federal Constitution. In the cantons the initiative applies to both constitutional and ordinary laws. In the United States of America, the initiative for constitutional amendment is allowed in fourteen States and for ordinary laws in nineteen States.

**Arguments in favour of Initiative.** Arguments in favour of the referendum and the initiative are more or less identical. But as the conditions of the latter's application are different, it needs to be considered separately.

The initiative is claimed to be the necessary development of the idea of popular sovereignty. The people, it is held, cannot truly rule if they act through representatives. (The individual will of the citizen really expresses itself by his own voice and vote.) Howsoever politically moral and best intentioned the representatives may be, they must act in accordance with and in conformity to the policy of the party to which they belong and obey its whip and, thus, may misrepresent those whose representatives they claim to be. (The referendum gives only the negative right to the people whereas the initiative gives them the positive right of framing laws which they actually need.) If the referendum protects "the people against the legislature's sins of commission so initiative is a remedy for their omissions".

② The legislatures, it is further maintained, are very often apathetic to the needs of the people and the representatives lag behind public opinion. Moreover, they primarily concern themselves to push through party programmes. If this is the case, then it is argued, "why should a body of persons chosen by the people close the door against the people themselves allowing only such proposals as take fancy to pass through so that the people can deal with them?" (A law initiated by the people carries with it the impress of public opinion and is, therefore, held in greater sanctity) and consequently (there is more ready and willing obedience to it.) Such political behaviour on the part of the citizens adds to the stature and stability of the government and all round reverence for the institutions of the country. Finally, the initiative minimizes the possibilities of political upheavals, because there is no indefinite postponement of legislation deemed essential by the people for their welfare; they hold it in their own hands.

**Arguments against Initiative.** But the initiative, like the referendum, reduces the authority and responsibility of the legislature. Making of laws, more especially drafting of bills, is a complicated and difficult task. It requires specialization which only experts connected with the work and members of the legislature acquire by experience. An average man cannot be expected to know the technicalities required in drafting bills. The result is that popularly initiated bills are "very often crude in conception, unskilful in form, marred by obscurities and omissions." (The language used in the initiated bills is very often seriously defective and liable to many interpretations.) This process of direct legislation therefore, transfers legislative initiative from knowledge to ignorance. In the cantons of Switzerland, where the initiative has been much more freely

used, it has not been the parent of any reforms which might not have been obtained through the legislature. The people, on the other hand, have sometimes placed unwise laws on the statute book. "Sometimes the prudence of Cantonal Councils," maintains Bryce, "dissuading the people from the particular plan proposed and substituting a better one, averted unfortunate results, while in the case of an ill-considered banking law the federal authorities annulled the law as inconsistent with the Constitution. Several times the people have shown their good sense in rejecting mischievous schemes proposed by this method." The much acclaimed advantages of *initiative*, therefore, are actually negated by the practical results

**Qualities necessary for the success of direct legislation.** Whatever be the degree of success of the referendum and the initiative in countries other than Switzerland, it cannot be denied that the mechanism of direct legislation is a difficult ideal and it demands certain qualities in the people to make it operative. The success which it has achieved in Switzerland is due to the historical antecedents of the Swiss people, to their long and continued practice of self-government in their small communities, to their social equality, and to their spirit of patriotism and sense of public duty. Similar success cannot be expected in countries where similar conditions are not obtainable. "It is racy of the soil," as Bryce says. "There are institutions which like plants, flourish on their hillside and under their own sunshine."<sup>25</sup>

Independence of judgment is the first quality which citizens must possess and exhibit in deciding political issues when left to their determination. Democracy, no doubt, is unthinkable without political parties, but party sentiments must not dominate the minds of the citizens. Each proposal should be dealt with on its merits and voting of any kind must not closely follow party lines. This is, indeed, impossible under the existing conditions, but the Swiss voter, as Bryce says, "always independent, is most independent when he has to review the action of his legislature."<sup>26</sup>

The quality most important in a legislating nation is compounded of two things; absence of passion and presence of intelligence. Wherever these qualities are present there is cool-headedness and, consequently, exercise of judicious judgment. The Swiss are the embodiment of this quality. They are neither an emotional nor a passionate people. They have the habit of voting in a calm spirit. They are cautious in their judgment and the great majority of the nation have always shown resolute hostility to extreme damagocic spirit. Finally, compromise and tolerance are the two other elements. A people more given to absolutes or inclined to extremist debates over abstract principles would find the system of direct legislation unworkable. There are no "talkers and fighters" in Switzerland. Politics there is unadulterated and a game of veterans who play it in a sportsman spirit.

**Future prospects of the method of direct legislation.** What good has direct legislation done in the countries where it has been actually

25. Bryce, J., *Modern Democracies*, Vol. I, pp. 453-454.

26. *Ibid.*, p. 433.



used? "The answer must surely be," writes Dr. Finer, "that these countries, save for the combating of the dishonest 'bosses' in the American States, are no better off and are probably worse off."<sup>27</sup> This is, he further adds, "certainly the opinion in America". In Switzerland the opinions, both of scholars and statesmen, on the value of direct legislation are most divergent. Some extol it as the most perfect institution, in theory and practice, so far devised. There are others who decry it on the ground that people are consulted on matters which they do not understand and assert that the actual working of the system has been bad. Some reformers resent the delays and checks inherent in the referendum and some voters complain the excessive demands made on their spare time. And yet the people as a whole value the privilege. The institutions of the referendum and the initiative are the pivot upon which hinges the entire Swiss governmental system. If they are abolished, certainly the present relations among the executive, the legislature and the judiciary will have to be altered and either the American or the British system of government adopted. This the Swiss are not prepared to do. The institution has become permanent in Switzerland. But Finer gives a stern warning not to accept direct legislation as a remedy for the defects of parliamentary government. "It improves nothing," he says, "neither the laws nor the people. It disturbs without providing solution. It is an appeal from a court which has the makings and some of the equipment of a wise legislature, to all the crudities of a majority vote. Its operations leave stark naked the physical power of numbers, surely not a desirable thing."<sup>28</sup>

### SUGGESTED READINGS

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|---|--|
| Bryce, G.                                 | : <i>Modern Democracies</i> , Vol. I, Chap. XIX, Vol. II, Chap. LXIV-LXV.                    |
| Finer, H.                                 | : <i>Theory and Practice of Modern Government</i> , (1954), Chaps. XVII, XVIII, pp. 560-568. |
| Kapur, Anup Chand                         | : <i>Government of Switzerland</i> , Chap. VII.  |
| Laski, H.J.                               | : <i>A Grammar of Politics</i> , pp. 308-340.  |
| Lees-Smith, H.B.                          | : <i>Second Chambers in Theory and Practice</i> .  |
| Loewenstein, Karl                         | : <i>Political Power and the Government Process</i> .  |
| Lowell, A.L.                              | : <i>Government of England</i> , Vol. I, Chaps. IX-XXIII.                                    |
| Luce, R.                                  | : <i>Legislative Assemblies</i> .  |
| Maeridis, Roy C., and Brown, Bernard E.   | : <i>Comparative Politics: Notes and Readings</i> .  |
| Marriot, J.A.R.                           | : <i>Second Chambers</i> (1927).   |
| Mill, J.S.                                | : <i>Representative Government</i> , Chaps. IX-XIII.   |
| Peaslee, Amos J.                          | : <i>Constitutions of the Nations</i> .  |
| Roche, John P., and Merry S. Stedman, Jr. | : <i>The Dynamics of Democratic Government</i> , Chaps. VI-VIII.                             |
| Sidgwick, H.                              | : <i>Elements of Politics</i> , Chaps. XXIII, XXVII.   |
| Smith, T.V.                               | : <i>Legislative Way of Life</i> .   |
| Willoughby, W.E.                          | : <i>Government of Modern States</i> , Chaps. XIX-XX.  |
| Wilson, W.                                | : <i>Congressional Government</i> .  |

27. Finer, H., *The Theory and Practice of Modern Government*, p. 564.

28. *Ibid.*, p. 568.

## The Executive

**Meaning of the term Executive.** The second branch or organ of government is the Executive. (The term executive is used to designate all those officers of the government whose business it is to execute or put into effect the laws.) It is the pivot around which the actual administration of the State revolves and includes all officials engaged in administration. Dr. Finer says that "it is most useful to look upon the executive as the residuary legatee, for that explains the mixed nature of its functions and parts".<sup>1</sup> In early times all power, of every kind, rested with one single person, the prince, and he exercised that power with his narrow circle of advisers. They not only executed policy but planned it and sat in judgment. As the movement for responsible government advanced, it caused "portions of the power to be taken over by other institutions, the remainder itself being subjected to certain norms of constitutional morality and controlled by the new organs." As, thus, understood the executive embraces the whole governmental organisation with the exception of the legislative and judicial organs and includes all officials, high and low, the Head of the State, his principal advisers and ministers, as well as the whole body of subordinate officials through whom the laws are administered. In this wide sense the term executive is the aggregate or totality of all the functionaries or agencies which are concerned with the execution of the will of the state as that will has been formulated and expressed in terms of laws. The

But it is customary to use the term Executive in its narrow sense which refers only to the Chief Executive Head of the State and his advisers and ministers. The Executive in Britain, in this context, means Queen Elizabeth II and her Ministers with Harold Wilson at the top. In India, it is President of the Union plus all Ministers headed by Shrimati Indira Gandhi. In the United States President Richard M. Nixon and his Secretaries constitute the executive. The primary duty of this part of the Executive is to formulate policy and to see that it is properly implemented. The policy implementation function is the job of the permanent civil service who actually run the various departments of the government and the field offices. Both, who see that the laws are properly enforced and those who actually enforce them, are really integral parts of the same machinery and all collectively constitute the Executive department.

1. *The Theory and Practice of Modern Government*, p. 575.

ment of the Government. The only difference between the two is that the former initiate the policy and supervise its implementation. If it cannot be carried out within the framework of the existing law, they propose new legislation in order to enable them to carry it through. The latter, members of the civil service, are not concerned with policy-making though at the top they considerably influence the policy-makers. Their primary function is policy execution or enforcement.

**Nature of the Executive: Real and Nominal.** In considering the nature of the Executive we must further distinguish between the real or actual executive and the nominal or titular executive. Before the Parliamentary system of Government came into being, there was no distinction between the two. But the presence of a nominal Executive Head of the State is the *sine qua non* of a Parliamentary system of government. The real functionaries, in such a type of government, are the duly constituted ministers. There is, thus, a difference between a executive and the executive. The Queen in Britain is a executive whereas her ministers, the real functionaries, are the executive. So is the case in India, and other countries having Parliamentary system of government. But in a Presidential system of government, as in the United States, there is no nominal executive. The President is both a executive and the executive; he is the Head of the State as well as the head of government. He is unfettered in his discretion and exercises real authority so long as he does not act unconstitutionally. Under absolute monarchy and dictatorship the question of distinguishing the real from the nominal Executive does not arise. Here all authority is concentrated in one single person.

**Single and Plural Executive.** The Legislature is organised on the principle that two heads are better than one, or that in a multitude of Councillors there is wisdom. The function of the Executive is not to deliberate, but to enforce the will of the State as expressed by the Legislature, and to carry out the decisions of the courts. The prime need for the efficient discharge of such functions is promptness of decision, singleness of purpose, energy of action and sometimes secrecy of procedure. It goes without saying that this is difficult to obtain when authority is equally distributed among a number of persons. Concentration of authority is the first requisite of the executive. A plural executive destroys responsibility, unnecessarily wastes time and is highly dangerous, particularly in times of emergencies. The advantages of a single chief, says Woolsey, "are obvious: he is able to bring unity and efficiency into the government, and being alone, he or his Ministry is responsible; whereas two Presidents would be apt to checkmate one another, if they were of different parties, and would be jealous and rivals if they were of the same party."

The executive, in brief, is organised on the theory that one bad General is better than two good ones. The executive organised on plural principle is incompatible with force, energy, unity of purpose and independence. It is, therefore, politically expedient that there should be some one person who can in the last resort exercise a decisive and final authority. Absolute monarchy and dictatorship are typical examples of a single executive. In a Parliamentary system of government the real executive is the cabinet. plural no doubt, but the cabinet, headed by the



Prime Minister, is a unit. It comes into office as a unit, it functions as a unit and goes out of office as a unit and collective responsibility is the method by which this unity is secured and enforced. The Cabinet is a policy formulating body and its members preside over the administrative Departments of government. Both for policy and administration, they are responsible to Parliament and they all act under the leadership of the Prime Minister. "The Prime Minister is," according to Lord Morley, "the keystone of the Cabinet" and occupies a position of exceptional and peculiar authority. "The Government", as Greaves puts it, "is the master of the country and he is the master of the Government." He forms it, he can alter or destroy it. He is the Chairman of the Cabinet, which formulates policy, and is the chief co-ordinator of the policies of several Ministers and Ministries. He is also the leader of the chamber to which the Cabinet owes responsibility and that chamber looks to him as the fountain of policy. He is also recognised to have an immediate authority to correct what he may consider the errors of omission and commission of his colleagues in the Government. Their identity is unknown without the Prime Minister. The Cabinet is, thus, a unity in collectivity and the question of divided responsibility does not arise. In the United States, the President is the real executive and his "Cabinet" works under his direction and guidance. His cabinet members may make speeches in support of the general policy of the administration and may even initiate a line of policy, which having been approved by the President may be described as their own contribution, but the ultimate source of policy remains the President. As Laski remarks, "But, in general, the American Cabinet Minister lives and moves and has his being in the context of Presidential thought. However able and distinguished, he is bound to be eclipsed by the major significance of his chief."<sup>2</sup>

States in the past have tried the experiment of a plural executive. In ancient Athens the executive power was divided among a number of officials, each independent of the other. Sparta, in early times, had two Kings and the Republican Rome had two consuls, both invested with the executive power, and each could veto the action of his colleague. France, after the revolution, experimented with the plural form of executive under several different constitutions. At the present time (Switzerland, Russia, People's Republic of China, Yugoslavia and other Communist countries of Eastern Europe present systems of plural executive. The executive authority of the Swiss federation is exercised by a commission of seven men known as the **Bundesrat** or the Federal Council. The Federal Council is chosen after every four years by the Federal Assembly and one of its members is annually elected to serve its Chairman and is designated as President. The office of President rotates among the members of the Federal Council according to seniority. The President is in no sense the chief executive, although he holds an office of some dignity and enjoys some precedence over his colleagues. Nor is he the chief administrator. He has no more power than his colleagues and he is not more responsible for the exercise of executive authority than other Councillors are. All decisions emanate from the Federal Council as a single authority. The President is simply Chairman of the Federal Council and he presides

2. Laski, H., *The American Presidency*, pp. 79-80.

over its meetings. As Chairman only he exercises a casting vote and that, too, in case of a tie. Such official authority as he may exercise comes to him as a member of the Council and as Head of one of the seven administrative departments.

In the U.S.S.R. there is no formal presidency. The Presidium, a body consisting of thirty-three members and elected for a term of four years by the Supreme Soviet, performs functions executive in character which are the prerogatives of the chief executive Head of a State in other countries with a single Executive. The Presidium has its chairman, but he has neither any special privileges nor any individual authority. Stalin called the Presidium a "collegiate President". The Constitution describes the Council of Ministers as the highest executive and administrative organ of State power. But under a system of one party government the policy determining and directing force is the inner circle of the Communist Party. The Presidium is, hence, a unique institution, indigenous to the Soviet system and without parallel anywhere else. The People's Republic of China, Yugoslavia and other Communist States have patterned their Executives on the Soviet example.

Many advantages have been claimed for the plural Executive. Its admirers maintain that an executive organised on the collegial principle does not afford temptations and opportunities for abuse of power. It is further maintained that vesting of Supreme Executive authority in one single person is a relic of absolutism and is consequently opposed to the spirit of Republican Government. The supporters of plural executive claim that it may lack the advantages of unity and energy which characterise a single executive, but a group of men, they assert, are likely to possess more ability and wisdom than can be found in any single individual. They further maintain that the executive function involves not merely ministerial function of executing legislative commands, but also the formulation of policy and this onerous task can best be performed by a board. Finally, plural executive renders more difficult executive encroachments on the legislative power and on the liberties of the people.

The experience of the plural executive has, however, demonstrated its inherent weakness. The practical working of the plural executive in Switzerland has been really admirable. But one single exception does not set a precedent. Its success there is mainly due to certain habits and traditions of the Swiss people. And then the Executive in Switzerland is not a separate and independent organ of the Government. It is subordinate to the National Assembly, which is sovereign, and functions on its behalf. In the U.S.S.R. the directing force remains the Presidium, the inner circle, of the Communist Party and those who direct the Party have their due place in the Presidium of the Supreme Soviet. Here, too, the Presidium functions on behalf of the Supreme Soviet. Modern political opinion is almost unanimous in favour of unity in the organisation of the executive. Plural executive lacks force, energy, unity of purpose and independence. It destroys responsibility, delays action by the necessity of consultation and hence establishes feeble government. A feeble government is another name for bad government. "Energy in the executive," Hamilton said, "is a leading characteristic of a good government."

## MODE OF CHOICE OF THE EXECUTIVE

Five different methods of choosing the chief executive Head have been followed in practice. The first is the hereditary principle; second, direct election by the people; third, indirect election by a body of electors chosen for that purpose; and fourth, election by the legislature; and the fifth, nomination.

**The hereditary principle.** The hereditary principle is associated with monarchical governments. The term of office is for life and succession goes from father to son, governed by the law of primogeniture. Hereditary monarchy is the result of historical conditions rather than the result of a deliberate choice and it now survives in the old countries. It is true that a hereditary executive carries with it certain manifest advantages, but the idea of monarchical government is so distasteful in this age that it now assumes only an academic interest. Its ultimate disappearance will doubtless follow in the course of political evolution of the future.

**(Direct popular election.)** The choice of the chief executive by the direct vote of the people is the opposite principle of the hereditary method. This method is the vindication of the principle of popular sovereignty. It grants the people the right to elect their chief executive who should represent their will and enjoy their confidence. But, in spite of its popular appeal, the method of direct election has been sparingly adopted in practice. The framers of the American Constitution ruled it out for various considerations. They desired to establish a method which would, as Hamilton put it, "afford as little opportunity as possible to tumult and disorder", and did not "convulse the community with any extraordinary and violent movements". They, accordingly, adopted a plan of indirect election. But, in point of fact, this intention on the part of the framers has been completely defeated, since the system created has been so worked in practice as to establish what is in effect election by popular vote. France adopted direct election at the establishment of the Second Republic in 1848, but abandoned it when the Third Republic was established in 1871. At the present time, only some of the Latin American States and the German Republic have deliberately adopted it. But the method is in frequent use in the selection of the "Chief Magistrates" of the territorial divisions of modern States as, for example, the Governors of the constituent states of the United States of America, and of the local executives of the Swiss Cantons.

*such a method.*

Many advantages are claimed for the direct mode of electing the chief Executive. Method of popular election, it is maintained, is more distinctly in accord with the modern ideas of popular government as it secures the responsibility of the executive directly to the people. When (the people) themselves have to determine who the chief executive should be, they minutely evaluate the merits and virtuous qualities of each candidate seeking election and the final choice falls on a man in whose ability and integrity they have faith. (Such a system stimulates interest in public affairs, affords a means of political education of the masses and presents the example of a government by the people.)

But there are some serious objections to this mode of popular choice. The masses are incompetent judges of electing so high a per-



sonage as the chief executive Head of the State. The electors can easily be influenced by the demagogue, who always tries to play with their emotions, and the popular choice may not be the best. Moreover, periodical elections of the chief executive Head of the State creates political tension and excitement in the country. Political rivalry, factional intrigues and often corrupt methods employed by the party machines account for general demoralisation. "As soon as one candidate is elected those who aspire to succeed him proceed to canvass the people. Party feeling is perpetuated and at election time it often becomes very bitter; it may even lead to foreign intrigue." (Hamilton feared that direct election would "convulse the community with extraordinary and violent movements and lead to heats and ferments" that would disturb public tranquillity.) Popular election of the chief executive, under the parliamentary system of government, produces radical change in the character of public life. The chief executive becomes the standard bearer of a party or a combination of parties. He could hardly be expected to maintain, under these circumstances, the mediating role as Head of the nation. If he is popular and commands the respect of people, he may use his position and authority to the detriment of the party in power in case of disagreement between the two and even make a bid to become a hero. This is really destruction of the parliamentary or responsible system of government.

**Indirect Election.** Indirect election is more common. It involves an election by an electoral college elected by the people. In theory, the President of the United States of America is elected by an electoral college in which every State has as many representatives as it has in both the Houses of Congress. This method of indirect election claims the advantage of avoiding the heats, tumults and convulsion of direct election. The choice of electing the executive Head is left in the hands of persons who are better qualified to judge than the masses. When the final choice rests with a small body of representatives the selection is likely to be intelligent. "It was desirable," maintained Hamilton, "that the immediate election should be made by men most capable of analysing the qualities adapted to the station. A small number of persons selected by their fellow-citizens from the general mass will be most likely to possess the information and discernment requisite to so complicated an investigation."

But all this is a mere theory. The elections are indirect only in name. The immediate representatives who constitute an electoral college show little evidence of independence of character and judgment. In almost every country, where political parties are highly organised, the electors are chosen on party pledges to vote for the party's candidate. They hold a definite mandate and are mere party agents with no discretion to exercise their votes. The election of the President in the United States has not only become direct in practice, but it has now assumed the form of an important national pugeant. "It is an operation of the first magnitude putting at stake the ambition of individuals, the interest of classes, and the fortunes of the entire country." Nearly everybody in America from the President in the White House to the man in the street interests himself in

it. It is a momentous event which involves nation-wide propaganda and entails an expenditure of millions of dollars on publications, meetings, "rounding up delegates" and "seeing that the goods are delivered". Thus, what was intended to be a scheme of indirect election of the chief executive has become in reality a system of direct election.

**Election by the Legislature.** Election by the legislature is another type of indirect election. The Constitution of India provides that the President of the Republic shall be elected by an electoral college consisting of the members of both Houses of Parliament and the elected members of the legislatures of the States. The President of France, according to the Constitution of 1875, was elected by the National Assembly consisting of two Houses of the legislature—the Senate and the Chamber of Deputies—sitting in a joint session at Versailles. Under the Fourth Republic, too, the President was chosen at a joint meeting of both Houses. (In Switzerland the Federal Executive Council is elected by the Federal Legislature.)

The idea underlying this method of election is that selection should be made by those who are best qualified to exercise their judgment in public affairs. The members of the Legislature, the supporters of this system maintain, are sure to make a wiser selection than the general mass of voters or intermediate electors constituting an electoral college. Being actively concerned with public affairs and intimately acquainted with the public careers of the statesmen, the members of the legislative assemblies are of all the persons more qualified to choose the best man for this august office. (The method, it is further asserted, ensures greater harmony and co-operation between the Legislative and Executive Departments thereby avoiding all possibilities of friction between the two.)

But election of the executive Head by the Legislature is a negation of the theory of the Separation of Powers. When the executive Head of the State is elected by the Legislature, he becomes its nominee and this may lead to political bargains, intrigues and jobbery. "It would be in the power of an ambitious candidate," observed Judge Story, "by holding reward of office, or other sources of patronage and honour silently but irresistibly to influence a majority of voters and thus by his own hold and unprincipled conduct to secure choice, to the exclusion of the highest and purest and most enlightened men in the country." Such a method of election is sure to impair the independence of the executive and makes him subservient to the will of the Legislature. It, also, seriously interferes with the normal functions of the Legislature particularly at times of great and exciting contests. This may not only lead to unnecessary waste of parliamentary time and energy, but also gives "a party colouring to the consideration of many measures which are in reality non-partisan in character."

There is, however, no doubt that the system of election of the chief executive Head by the Legislature has given excellent results wherever it has been experimented. In all these countries the election of the President takes place with little or no popular disturbance. The modern tendency is, accordingly, in favour of election by a Legislature.

**Nominated Executive.** Nominated executive for the most part

exists in dependencies of some great powers. The Governor-General, during the British rule in India, was a nominated executive. Similarly, the Governor-General of Korea was appointed by the Emperor of Japan and the Imperial Diet. The choice of the incumbent of the office is made on the basis of his qualifications and special fitness for the job to which he is called upon to supervise. The Governor-General of Canada as well as that of Australia is appointed by Her Majesty the Queen on the recommendations of the governments of their respective Dominions from amongst Englishmen in public life, or the nationals of their own countries. The Dominions have preferred such a method of appointment themselves and it does not make them subordinate to Britain. Both Canada and Australia are sovereign States.)

**Term of office of the Chief Executive.** Opinions differ as to the length of term for which the chief executive Head of the State should be elected. In practice, the executive tenure ranges from two years, which is the rule in many States in the United States, to seven years, which is the term of the President of the French Republic. The President of India holds office for a term of five years, whereas it is only four years in the case of the President of the United States. The term of the Swiss Federal Council is four years and the office of its President rotates every year among its members. The nominated Governors-General of Canada and Australia are appointed for a term of five years.

The argument in favour of short tenures for the executive is that the shorter the period of office the greater the security against abuse of power. In fact, there had prevailed a strong belief in the democratic countries that Executives with long tenures are always exposed to a temptation to transform their offices by means of a *coup d'etat* into monarchy tenure as Napoleon did when he converted his consulship of ten years into one for life and then into an imperial office. Whatever be the verdict of history, there is no denying the fact that too short a term of office, like one or two years, is politically inexpedient. A short term makes the Executive timid, weak, lacking in independence, and without a policy. There is neither any inducement nor any incentive and the most that can be expected of the majority of men, under such circumstances, will be "the negative *mérites* of not doing harm instead of the positive merit of doing good".

Popularly elected executive Heads are generally amateurs in the art of administration. By the time they acquire some familiarity of their duties and responsibilities, their brief term of office expires and they quit. The result is that another amateur comes in who is as much inexperienced as his predecessor was. Continuity of executive policy and stability of administration are impossible under such circumstances. Moreover, short tenures mean frequent elections accompanied by the inevitable popular excitement and commotion.

The term of office for the executive Head should neither be too short nor too long. Very short term of office bears no fruit and a very long term may lead to abuse of power. A four to five years term has much more to commend it. It is long enough to constitute energy, stability and efficiency in administration. It can also ensure responsibility of the Executive to the public opinion. It is a period, observed Chancel-



lor Kent, reasonably long enough to make the Executive "feel firm and independent in the discharge of his trust and to give stability and some degree of maturing to his system of administration". A six-year or seven-year term is not favoured. It is considered to be an unduly long term. "A responsibility which cannot be enforced at shorter intervals than once in six or seven years manifestly loses much of its effectiveness."

**Re-eligibility for office.** A long term of office obviates the necessity of re-eligibility. But when the tenure is short the desirability of re-eligibility of the executive Head becomes an obvious necessity. There is, however, a variety of practice. In some Latin American States Constitution forbids re-election. In Argentine, Brazil and Chile a second term election is permitted after the lapse of a specified intervening period. The Constitution of the United States, till the Twenty-second Amendment became effective in 1951, was silent over the re-election of the President. It simply provided that the President would be elected for a term of four years. President George Washington set a precedent limiting it to two terms. This was scrupulously followed till President Franklin D. Roosevelt broke it and offered himself for the third and fourth terms and was re-elected. The Constitution now limits it to two terms election. The Irish Constitution permits one term re-election. The Burmese Constitution, too, is limited to one term re-election. The Constitution of India does not impose any express limitation to the number of terms for which the President may be re-elected. When President Rajendra Prasad was elected for the second term, a non-official Bill was sponsored in the House of People in 1957, favouring restriction to two consecutive terms. The Bill was withdrawn after the Law Minister expressed the view that such matters should be left to convention and not decided by statute. Dr. Prasad did not offer himself for election for third term, and thus, a two-term precedent has been set.

Many advantages are claimed for a single term. Ineligibility to a second term, it is maintained, tends to secure independence in the executive, and it serves a check upon the personal ambitions of the Head of the State. A man who knows that he is not eligible for re-election will not pander to the people. In all his public acts he will impress independence of character and judgment. When re-election is permitted, he will undertake nothing new and a large portion of the latter part of his term of office will be occupied in matters relating to his election, and to the neglect of official duties.

But the consensus of opinion is in favour of re-eligibility of executive Heads elected for short terms. The advantages of re-eligibility were nicely summed up by Hamilton in *The Federalist*. He asserted that re-election of the executive was necessary "to enable the people, when they see reason to approve of his conduct to continue him in the station in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of government". The system of re-eligibility enables the State to retain the services of experienced and talented men who command public approbation and confidence. To forbid re-eligibility is to deprive the State of the services of a wise and experienced statesman. "What could be more strange", maintained Judge Story, "than to declare at the moment when

wisdom was acquired that the possessor of it should no longer be enabled to use it for the very purpose for which it was acquired." A man who is assured of re-election can best harmonise his interests with duty. Re-eligibility helps him to rise high in the service of the nation. "The desire of reward and fame," to quote Hamilton again, "is one of the strongest incentives of human conduct; and the best security for the fidelity of mankind is to make their interest coincide with their duty." The rule of ineligibility, on the other hand, creates in the executive Head a tendency to make the best use of the opportunity in order to promote personal ends. He "might not scruple to resort to the most corrupt expedients to make the harvest as abundant as it was transitory". Finally, re-eligibility ensures stability in administration. If re-eligibility is not permitted, administration would drift along without plan or policy.

The expediency of re-eligibility, however, depends upon the length of the term of office and the extent of powers which the executive Head actually exercises. One elected for six or seven years can manifestly be made ineligible for a second term but the executive head elected for, say, four or five years should obviously be made eligible for the second term to increase his responsibility.

### FUNCTIONS OF THE EXECUTIVE

The most fundamental executive functions are those which relate to essential activities of Government. The modern State is a complex structure and it has to cater for the satisfaction of innumerable human needs. The province of the State has considerably increased and the modern Governments have become more socialistic in their outlook. We do not agree with the old theory of Individualism that the State is a necessary evil and its only function is to preserve internal peace and external security. Our political outlook is entirely changed. The State is now regarded as a means for achieving the welfare of man. It must, therefore, provide for that atmosphere in which welfare can best be realised. If this is the *raison d'être* of the State, then, no rigid line of demarcation can be drawn defining its functions. There is, however, no uniformity between the executive functions of one State and the other. Broadly speaking, the essential functions may be enumerated as:

1. **Internal Administration.** Every State is a politically organised society. The purpose of the State cannot be realised unless there is internal peace and order. It is the foremost duty of every executive to devise ways and means in order to ensure maintenance of peace within the country. The department which is responsible for the maintenance of internal peace and order is called the Home Department, or the Department of the Interior—the nomenclature varies from State to State.
2. **External Administration.** All States are sovereign and independent. But no State can lead an isolated life or exclusive independence. All States exist under conditions of mutual dependence. To ensure mutual peace and security and to avoid all acts of aggression against one another, States adjust their differences, if any, through diplomatic negotiations. In order to further international goodwill and amity treaties are concluded and representatives are appointed in foreign countries. The department of government which conducts foreign relations

is called the Department of Foreign or External Affairs. The conduct of foreign relations includes the reception and dispatch of diplomatic agents, recognitions or non-recognition of the independence or legitimacy of new States and governments. It negotiates and concludes, through its representatives, treaties and agreements. In some States the treaty-making power of the executive is subject to approval and ratification of one or both the Houses of its legislature. In the United States the Senate ratifies all treaties. Although the Legislature, generally, controls the foreign policy of a country, yet it rarely interferes in the actual administration of the foreign department, as the conduct of foreign affairs requires high technical skill, secrecy of information and personal act.

3. **Defence and War.** It is the essential function of the executive to secure territorial integrity of the State and to protect the country from external aggression; and, when necessary, to wage war. The problem of common defence today is entirely different from what it was a century or so before. No country can afford to wait for defence until war is declared. It must always be prepared to ward off the probabilities of war and to win, if it actually comes. (The department which is concerned with the defence of the country and controls its military operations is called the Defence and War Department. This department may be bifurcated into two—internal defence, and war-department when a country is in the midst of hostilities. The Defence and War Department determines the strength and organisation of the armed forces of the country, Army, Navy and Air Force, and appoints the Generals and the Commanders. In Great Britain the Executive has the power to declare war independently of the legislature. In the United States war can be declared by Congress. But in every country the powers of the Executive during the period of war increase immediately and immensely.) Usually the Legislature expressly confers powers on the Executive to control production and transportation, to establish rationing, to institute censorship, and to suspend the operation of certain guarantees of rights and civil liberties. Even when such powers are not conferred, the Executive may take any necessary action to safeguard the safety of the State and ensure the successful prosecution of war.

4. **Financial functions.** All governments spend huge sums of money every year to perform their multifarious functions. When money is to be spent, it must be obtained by some means. Governments meet their expenditure by taxing the people and by tapping other sources of income. This is an executive function and the department which makes provision of ways and means is called the Finance Department or the Treasury. This department is the most powerful, because it not only allocates money to the different departments but also regulates and controls their expenditure through audit.

5. **Legislative functions.** The legislative functions of the Executive vary with the form of government that prevails in the State. It is everywhere the right of the Executive to summon, adjourn and prorogue the sessions of its Parliament. In countries where there is a Parliamentary form of government, the Executive dissolves the popular House and orders new elections. It can also convene special sessions of the Legislature whenever necessary. The Executive furnishes necessary information to



the Legislature regarding the needs of the country) either at the beginning of the session, or from time to time during the continuance of the session. The Speech from the Throne on the opening of Parliament in Britain or the Presidential address on the opening day of the session of Parliament in India is, generally, the exposition of the policy which the government desires to pursue and legislation in pursuance of that it intends to enact. In the United States the President has the right to send messages to Congress embodying the various legislative actions considered expedient, including the budget.

In a Parliamentary form of government) the real (Executive) is part of the Legislature, it controls the time schedule of the Legislature and it, thus, (provides the much needed element of leadership to the Legislature.) It is the function of the Executive to initiate and pilot (all public bills and see them through in the Legislature. All bills passed by the Legislature must receive the assent of the chief executive Head in order to become laws.) He can also veto or refuse his assent thereto. The veto power has, however, come into disuse in most of the countries with Parliamentary or Responsible governments; in others it is only a suspensive veto. For example, in India the President can withhold his assent to a bill. But when he does so, he must send it to Parliament for reconsideration along with his message. If Parliament again passes it either with or without amendments, the President must give his assent thereto. In Britain, legally the King may refuse assent to any law passed by Parliament. But this power of the King has now become obsolete; it has never been exercised since 1707. In a non-Parliamentary or Presidential government the power of vetoing a bill by the chief executive is an effective control over the Legislature, although it may not be an absolute veto as in Britain. The President's veto in America can be negated by a two-thirds majority of Congress. Nevertheless it is a potent instrument in his hands, because two-thirds majority in Congress is difficult to secure. The President also exercises what has come to be known as a 'pocket veto'. The veto power vested in the Executive is, thus, valuable as a means of preventing hasty and ill-considered legislation and gives the Executive a means of defence against encroachments against its powers and prerogatives.

Again, (in every country the Executive is armed with the power of issuing ordinances.) It is a sort of subsidiary power of legislation which takes the form of decrees. This power is frequently expressly conferred on the chief executive Head by the Constitution. The Constitution of India empowers the President to issue at any time, except when both Houses of Parliament are in session, ordinances, which will have the same effect as Acts of Parliament. Every such ordinance must be laid before both Houses of Parliament and it ceases to operate at the expiry of six weeks from the reassembly of Parliament or, if before the expiry of that period resolutions disapproving it are passed by both Houses. In the absence of an express authority in the Constitution, it is deemed to be an inherent power of the chief executive Head of the State to issue ordinances. In countries with a monarchical form of government, the ordinance issuing power is considered a part of the royal prerogative unless there is a constitutional or statutory limitation to it. This device of legislation has still more enhanced the legislative powers of the Executive.

The increased range of state activities has forced Parliaments, during recent years, to delegate wide legislative powers to the Executive. The legislative delegation of authority may be effected in various ways. For example, in Britain Parliament may legislate in general terms on some question and leave one of the departments to work out the detailed regulations necessary to give effect to the statute. It may also merely empower a department to make rules with regard to a specified matter. Rules, regulations, orders so made are known as delegated or subordinate legislation and have the force of law. They are declared unconstitutional only if they offend the parent law.

Delegated legislation is quite inescapable in the context of a modern State and it has significantly added to the powers of the Executive. It is also an ideal for an emergency as it arms the Executive with power to take immediate action. The Committee on Ministers' Powers in Britain, while dealing with this aspect, reported: "In a modern State there are many occasions where there is a sudden need for legislative action. For many such needs delegated legislation is the only convenient or even possible remedy." Moreover, delegated legislation enables the Executive to provide for all the unforeseen contingencies arising out of reform without having to return to Parliament for amending acts or additional powers. Delegated legislation also relieves the pressure on parliamentary time by removing details of administration from Acts of Parliament.

6. **Judicial functions.** The right of pardon or clemency is by common consent regarded as a natural and necessary part of the Executive function. This is a semi-judicial function and is justified for various reasons. In the first place, it is intended to correct the error of judgment of the judiciary which cannot be rectified otherwise. Moreover, a judge decides the case on its merits and not on grounds of political expediency. Many persons may be convicted of political offences, but with the lapse of time their detention may become inexpedient. By vesting the executive with the power of pardon, the release of such persons can be ensured.

A very important result of delegated legislation is the emergence of administrative adjudication empowering the executive agencies designated by statutes to hear cases involving particular fields of administrative activity. Dr. Finer maintains that "wherever there is administration and law, there is administrative law". The great majority of legislation passed by Parliament of every country and regulations made thereunder relate to matters of public administration and invest judicial power in the Executive to administer the law. Delegated legislation naturally has made the Executive more powerful than the case was before. This has evinced a stout protest and Lord Hewart in England reflected the attitude of alarmed jurists in his book, *The New Despotism*, and called to the attention of the public the dangers that he believed to be attendant on this development.

7. **Some other functions of the executive.** The functions enumerated above are usually regarded as essential functions of the executive. But, as stated previously, we cannot circumscribe the functions of a modern government. No government can afford to ignore subjects like commerce, education, agriculture, transport and communications, etc. These are the beneficent departments and without their proper develop-

ment it is impossible to promote that atmosphere which helps to advance the welfare of man.) Similarly, (most of the governments now actually run certain public utility services, and impose statutory restrictions on the production and sale of various commodities.) (These changes in the province of the State have been introduced as a result of conscious attempts to bring the economic organisation in conformity with our moral and political ideas.) Much has been done to moralise our economic system and "co-ordination, regulation and control, initiative and encouragement, in many cases ownership, are regarded as essential in these fields: and the departments concerned are little less important in the eyes of the public than the so-called essential or major departments." The scope of the modern State has, in fine, increased enormously and with it have expanded the functions of the Executive. Dr. Finer has given a matter of fact summing up of the enormity of its task. He says that the scope of the State today "hardly fails to envisage any branch of the moral or material sides of human endeavour. The record is written on the roads, the gutters and the buildings and spells what the state has done in order that society may have a modicum of wisdom, protection of persons against criminals and mechanically propelled vehicles, and environmental and personal defence against deadly bacteria. The annual thousands of Rules and Orders, the detailed and present plan of activity of all modern States, reveal how the State concentrates upon each individual and weaves his very impulse into the myriad threaded warp of its existence.... The State is everywhere, it leaves hardly a gap."

**Executive leadership.** The development of the Executive into what may be called the multi-functioning organ is one of the notable features of the modern government.) To quote Barker, "If the growth of the legislative organ, in consequence of the development of the cabinet system, was the notable feature of the eighteenth century, it may be said that the growth of the executive organ, in consequence of the extension of rights and the corresponding extension of services which mostly fall to the lot of the executive, is the notable feature of the twentieth." | Today, the Executive is not only an executive, it is also, at the same time, a legislature and judiciary.

(It is Legislature in two ways. First, it suggests and guides legislation. When Cabinet has determined on a policy, the appropriate department carries it out either by administrative action within the framework of the existing law or submits a new bill to Parliament so as to change the law for the effective implementation of the new policy. Legislation is, thus, the handmaid of administration and Cabinet is the instrument which directs Parliament to action in a certain way and so long as it can command a majority in Parliament it gets the necessary approval. In fact, we cannot make a vivid distinction between legislation and administration. "In modern State," writes Jennings, "most legislation is directed towards the creation and modification of administrative powers". The Cabinet plans the legislative programme at the beginning of each session of Parliament. Public bills are introduced and piloted in Parliament

4. Gilchrist, R.N., *Principles of Political Science*, p. 310.

5. Finer, H., *The Theory and Practice of Modern Government*, p. 1105.



usually by a Cabinet Minister or by some other Minister acting on Cabinet's approval. (Cabinet is, therefore, the legislative leader) and truly speaking it legislates with the advice and consent of Parliament. Even the Opposition expects the government to lead the legislature as opposition of today is the government of tomorrow. Summing up the leadership of the Executive, Ogg maintains, that the Cabinet "formulate policies, make decisions, and draft bills on all significant matters which in their judgment require legislative attention, asking of Parliament only that it gives effect to such decisions and policies by considering them and taking the necessary votes".

Under the Presidential system of government, the President is not merely a chief executive, but he is also the executive. In the presence of checks and balances the Legislature considers itself an equal to the Executive. But really it is not. The status of the President is, indeed, exalted. He has been justly described a party leader, chief legislator, and general mobilizer of public opinion. The role played by outstanding Presidents of the present century, such as Wilson and Roosevelt, is an accurate description of leadership both in the Legislative and Executive branches.) The President has a direct access into the legislative field through his constitutional powers to send messages, to recommend measures, to summon special sessions, and to veto bills.) In addition, he has many other means to supplement his political strategy. By the use of patronage, "Jobs could be traded for votes. By effective appeals to the voters through the spoken word, press, radio, and lately television, chief executives have been able to dramatize their programmes and compel consideration of their views" and get them accepted even if the Legislature is hostile.

(The Executive, apart from and in addition to its work of suggesting and guiding the process of law-making through the legislative assemblies, also acts as a Legislature when it issues decrees, ordinances, regulations and orders. The power of issuing rules and regulations is exercised in virtue of delegation of a legislature power authorised by the legislature itself.) It has now become a normal practice with all Legislatures to pass laws in general terms leaving discretionary authority with the Executive to fill in the gaps and this is tantamount to legislating in fact. In 1931, the Gold Standard (Amendment) Act empowered the Treasury in Britain to legislate for the Control of the Exchange. The National Economy Act empowered the King-in-Council to effect reductions, including cuts in salaries, in certain public services. The National Recovery Act, 1933, authorised the President of the United States to organise and regulate the industries, to create new agencies, to make regulations for them, to delegate functions for subordinates, and to do other things deemed necessary to bring about economic prosperity. The Trade Agreement of 1934 empowered the President to make trade agreement with foreign nations and lower the existing tariff rates by 50 per cent.

(The extension of services, particularly social services, which has largely caused the growth of the executive legislation, has also caused the growth of judicial jurisdiction of the executive. This aspect is rather more serious than is the growth of executive legislation.) When the legislature confers "a measure of legislative power upon the executive, it

takes something away from itself; but when it confers upon the executive a measure of judicial power, it is diminishing not itself, but an organ other than itself". Administrative adjudication, as it is called, is the latest addition in the armoury of executive powers. It may be defined as "the process by which administrative agencies settle issues arising in the course of their work when legal rights are in question".<sup>6</sup> According to Dr. White, "Administrative adjudication means the investigation and settling of a dispute involving a private property on the basis of law and facts by an administrative agency." (Planning and active service, the essence of a Welfare State, need unified action. The "concert of leadership", as Dr. Finer names it, is now provided by the Executive.)

Emergencies call for quick action in order to maintain the safety of the nation from external attack. Legislatures are not appropriate forums for discussion of military tactics and strategy. Some decisions must be taken on the basis of confidential information concerning the might and military capability of the enemy and it is usually not considered expedient to give too many hints to other side concerning one's own intentions. The instability of international relations in the modern era has led inexorably to enhanced importance of the military, and consequently also of the branch of government best able to direct the military. Power accumulated in this area has added to its powers in all other regards.

The growth of political parties, the need for rational action in the public interest, the urgency of despatch in military and foreign affairs, in brief, have resulted in the shift of leadership to executives in all modern democracies. Legislation is inspired by the Executive, budgets are drawn by the Executive, State direction of the economy is assured by the Executive, and foreign policy is formulated by the Executive.

### CIVIL SERVICE

As stated earlier, (the term executive, in its broadest sense, includes not only the chief executive Head of the State, but also the entire body of administrative officials, high and low. The real work of administration is done by the permanent members of the Government. In fact, the work of Government would never be done, if there were only the Ministers. It is true that each Department of administration is headed by a Minister, but it is not his business to run the Department. His business is to see that the department pursues a definite policy and it runs in a certain direction. Those who actually run the department) and implement the policies of the Government (are known as the members of the permanent Civil or Administrative Service. They have a permanent status and tenure and are selected for their administrative capacity alone. They have no interest in party politics and do not go out of office when a Ministry changes. Permanency of tenure gives to the Administrative Services security of service, and specialisation in their field

6. Dimock and Dimock, *Public Administration*, p. 460.

7. *Introduction to Public Administration*, p. 553.

of work. Permanent civil servants are, in fact, the reservoir of experience and knowledge. They furnish to Ministers and Legislature all information necessary for shaping and enacting policies on a multitude of subjects. Laski says "that every State is enormously dependent upon the quality of its public officials."

The term Civil Service, therefore, covers the large number of officials necessary to run the machinery of government. This enormous mass, that goes into hundreds of thousands in a large State, is divided into the various ministries or departments, together with a multitude of field officers. At the top is a Minister, an amateur and a political head of the department, and immediately below him are the men, Secretaries, and Deputy Secretaries, who share with him the direct framing and execution of departmental policy. Then, there are persons of different categories, at the bottom the most junior clerks, employed in the carrying out of ministerial orders and doing all routine work connected thereto. These orders are implemented by officials of the relevant department spread throughout the country.

**Method of Appointment.** Such being the importance of the Administrative Services in the framework of the Government, (it is necessary that public servants must be persons endowed with ability, efficiency and high calibre. "The civil service," writes Sir William Beveridge, "is a profession, and I should like it to become and realise itself as a learned profession". It is, accordingly, essential that recruitment should be based on merit rather than on favouritism. According to Laski, the Administrative Services "must live under the aegis of two rules". In the first place, the Executive should possess the least control over the appointment of public officials. When appointments are left to the exclusive control of the political executive it is a prolific source of corruption in public life. This is clear from the experience of every modern State. The notorious spoils system in the United States led to administrative dislocation and public scandal.) Before the Haileybury's experiment, Civil Service in Britain had little to commend itself. Unless, therefore, the public service is beyond the reach of the executive, it is inevitable that the mind of the minister should be devoted not only to the problems of his office, but to the need of rewarding his followers.) (Public servants recruited under these circumstances "will use the posts they fill not for the performance of their duties, but for lining their own pockets at the public expense". It will deplete the public service of experience, ability, and expertness which are so essential for the efficient conduct of public administration.)

② Appointment of public servants, therefore, should be made under rules which may reduce to a minimum the chance of personal favouritism. The principle of open competition for recruitment is the only satisfactory method which can commend itself. This means that for all, except purely technical posts, admission to the Administrative Services must be "on the sole basis of being able to satisfy suitable tests for the type of appointment vacant") The Trevelyan Committee in Britain recommended that "as an indispensable means of attracting able young men



into the service, admission should be placed on basis of competitive examinations open to all administered by an independent Central Board". Experience has shown that the competitive examination system has proved the more satisfactory method of selection for the civil service. Another important principle for the recruitment is that entrance to the public service should "normally be at the age, when, in a similar position in ordinary life, a young man or woman expects to earn a living".<sup>9</sup>

It means adoption of Civil Service as a permanent career or professionalisation of Civil Service. According to Professor Milton Mandell, it is a system "predicated on recruiting young men and women with capacity to learning and growth, training them in order to develop and utilise their aptitudes, and offering them opportunities for advancement in responsibility and remuneration".<sup>10</sup> Professor Willoughby defines the term Government Services Career as "a system that offers equal opportunities to all citizens to enter the government service, equal pay to all employees doing work requiring the same degree of intelligence and capacity, equal opportunities for advancement, equally favourable conditions and equal participation in retirement allowances, and makes equal demands upon the employees". Prospective candidates are recruited in service at an early age, in their formative period, and are, then, systematically trained in the technique of administration with a view also that they should possess the intrinsic qualities which a civil servant should possess. The theory is that civil service has a distinct character of its own. "It is different," as Dr. Finer says, "from business, from an art, from teaching, from other professions. Its objectives are individual, its spirit and methods are special."<sup>11</sup> The young people, therefore, should enter the government service at an age "when their minds are open to influence by the individual character of government activity."<sup>12</sup> By making civil service a career, the government guarantees to its employees permanence of tenure of office, the fullest freedom of advancement and promotion and a comfortable pension on retirement.

It also entails the systematic classification of government jobs. When the employees of a government cover such a large number of people performing diverse jobs and representing almost every vocation, occupation and profession, it is necessary to standardise and classify their positions in order to integrate them into a pyramidal structure. It is really the *sine qua non* and, indeed, the starting point of public employment. Such a classification and standardisation help to settle the questions of pay, line of promotion, requirements of transfer and other day-to-day matters concerning the service.

**How the government operates.** Government operates through its secretariat. The secretariat is divided into Ministries or Departments among which various subjects of government activity are distributed according to administrative convenience. Each Department or Ministry, under a Parliamentary system of government, is presided over by a Min-

9. *Ibid.*, p. 339.

10. M. Marx (Ed.), *Elements of Public Administration*, pp. 558-559.

11. *Principles of Public Administration*, p. 206.

12. *Theory and Practice of Modern Government*, *op. cit.*, p. 786.

ister. In most of the Departments or Ministries there is at least one junior Minister whose task is to assist the Minister in his administrative and parliamentary duties. Besides the political heads of various Departments are a number of permanent officials and the clerical staff. At the head of each Department is the Secretary who occupies a position of very high responsibility and importance. The Secretary is, in fact, the key-man in the Department who helps his political chief so that the Department works efficiently and in conformity with the policy of the Government. The Secretaries have in most cases been so long attached to their respective Departments that they acquire complete grasp of affairs within their own spheres and provide a permanent brain trust to the Ministers, who are amateurs in the art of administration. Then, there are in the Department, possibly a Joint Secretary, a Deputy Secretary, and Under-Secretary, Assistant Secretaries, Superintendents, and many others who do merely secretarial work of a purely routine character and transmit the orders and instructions to field offices for implementation. The civil servants, in brief, keep the wheels of governmental machine going and act as agents for the fulfilment of the policy of the party in office. Their rigid neutrality and rigorous impartiality in the political issues is the first code of their official conduct and they serve with equal fidelity whatever be the complexion of the Government. All Civil Servants owe a temporary allegiance to the party in power and its programme, no matter what their bias or personal conviction. "The first thing," observes Viscount Attlee, "a Minister finds on entering office is that he can depend absolutely on the loyalty of its staff and, on leaving office, he will seldom be able to say what the private political views are even of those with whom he has worked most closely."<sup>13</sup>

**Functions of a Department.** The functions of a Ministry or a Department may broadly be said to be four. First, a Department must answer for its administration to the people. Since it translates policy into practice the Department must be capable of explaining itself. It means the accountability of administration to both the legislature and the public. The Department must, accordingly, provide to its political chief all relevant information so that he may be able to defend the actions of his Department on the floor of the Legislature and on the public platform. It involves that the work of the Department should be conducted and its policy so framed that it should be capable of "articulate rational defence".

The second function of a Department is the drawing up of its policy. Policy is, in fact, formulated by the cabinet. But all details with the working out of policy so formulated and all routine business connected therewith are left to various Departments of Government. Very often the Department may itself devise proposals within the framework of the policy of the Government. Such proposals may either be the outcome of the Department's own administrative experience or may be the result of the directions given to it by the political chief. Whatever be their origin, the Department prepares the draft of the scheme, works out its details, and consults the interests likely to be affected by it. If the

scheme of the policy cannot be carried out within the framework of the existing law, then, it passes into the stage of proposals for a bill. After it has been approved by the Cabinet, it is drafted as a bill to be laid before the Legislature. The bill is sponsored and piloted by the Minister in charge of the Department to which it relates and it is his responsibility to see it through. The members of the Civil Service have to remain in attendance in the Legislature to assist the Minister with information and advice whenever he is under fire in the House.

Most modern statutes are "Skeleton" legislations. Legislatures legislate in general terms empowering the Departments to work out the detailed regulations necessary to give effect to the statutes. The Department will, probably, concurrently with its preparation of the bill work out regulations and subordinate acts of legislation and shortly after the bill becomes law will issue them in the form drafted by the Law Department. In the application of the rules and regulations to specific cases the Minister or a member of the Civil Service may assume a quasi-judicial role and decide disputes accordingly. This is the third function of a Department.

Finally, the function of the Department is to implement policy. When policy has been determined, presented and sanctioned, it becomes the duty of permanent officials of the Department to see that it is faithfully carried out by the field officers appointed at different levels. The Department directs, instructs, supervises and controls whereas the field officers obey, implement, and report, if necessary accompanied by suggestions. It is for the Department to accept those suggestions or not. The actual authority flows from the Department, and the actual impact of the officials of the Department is always considerable.

**Public Service Commissions.** It is a cardinal principle of Civil Service recruitment that the selection should be made by a specially constituted agency, called a Public Service Commission. A Public Service Commission, as a rule, has statutory existence and powers, the object being to ensure the integrity and independence of its members. The members of a Public Service Commission are appointed under special terms of tenure and they can be removed from office under circumstances similar to those of the judges.

The functions of the Public Service Commission are best described in the Constitution of India.<sup>14</sup> It prescribes:

- (1) The Union and the State Public Service Commissions shall conduct examinations for appointment to the Union and State Service respectively;
- (2) To give advice:
  - (i) On any matter referred to them relating to methods and recruitment to civil services and civil posts;
  - (ii) On principles to be followed in making appointments, and in making promotions and transfers from one service to another;



- (iii) On disciplinary matters including petitions on such matters;
- (iv) On the claim made by any person that the costs of defending legal proceedings against him for acts done or purporting to be done in the execution of his duty should be borne by the Government;
- (v) On any claim for the award of a pension in respect of injuries sustained by a person while serving under the government in a civil capacity and any question as to the amount of any such award.

(3) Any other functions as respects services conferred by Parliament in the case of the Union Commission and by the State legislature in the case of State Commission.

**Administrative Services Evaluated.** The Administrative Service embraces all the permanent officials in the State, high and low, that is, a multitude engaged in clerical jobs of a routine nature and those actually concerned with administration including the highest departmental adviser to the political chief of a great Department of the Government. The welfare of the State depends normally far more on the former than the latter. With their expert knowledge they help their political chief to see, that the Department works efficiently and in a particular direction. Lord Balfour has given a true picture of the position which civil servants occupy in Britain: "They do not control policy; they are not responsible for it. Belonging to no party, they are for that very reason an invaluable element in Party Government. It is through them, especially through their higher branches, that the transference of responsibility from one party or one minister to another involves no destructive shock to the administrative machine. There may be change of direction, but the curve is smooth."

The higher branches of Administrative Service make a significant contribution even in the determination of policy. The determination of policy is, no doubt, the work of the Cabinet or for that matter of a Minister, but the preparatory work is the task of the Department and in great part the result of the influence exerted by the members of the Civil Service at the top. When the policy has been determined and finally sanctioned by Parliament, it becomes the duty of the permanent officials of the Department to see that it is faithfully carried out. The men at the top, again, decide and instruct how best the practical fulfilment of the policy can be realised. The orders are made and given at the pinnacle. Then, follows the chain of those who act on those orders and instructions and accomplish the desired results.

The Administrative Service has been lavishly praised for its efficiency and exceptionally high rating. But it does not mean that it is perfect. There is evidence to prove that merit, in every country, has often been discounted have and the evils of political patronage have not been quite so completely eradicated. (The nature of examinations conducted by the Public Service Commissions is too academical and the entrants are recruits with no knowledge of the Department in which they are to be posted.) Administrative Services, it is maintained, carry with them all the defects

→ Absence of pre-entry Training has resulted into inefficiency of the services.

of bureaucracy. <sup>Then</sup> (Officialism and red-tapism are the rule and not the exception) A certain amount of exactness is, of course, essential in the observance of regulations, but "excess in this direction" means multiplicity of forms and files and endorsements and records, so that the transaction of business is impeded rather than eased". Another danger inherent in bureaucracy is that of "departmentalism"—the danger of splitting up the work of government into different isolated and self-dependent sections, each pursuing its own ends. This compartmentalisation (results into departmental friction) as every Department plans only for its own betterment without any regard to efficient co-ordination with others. There is also evinced a tendency of self-aggrandisement and self-importance, because of the professional or expert knowledge of the civil servants. It breeds narrow outlook.

"The exaggeration of the hierarchical principle makes one fear to do anything at all, when it is possible to shift the responsibility to some one above." Such an attitude of mind issues a flood of paper work, unnecessary noting and a cloud of irresponsibility. Centralisation also means that thinking can only be done by the head of the department, "the Commander-in-Chief". This clearly shows that there must always be "anemia at the extremities and apoplexy or congestion at the brain".

(But it cannot be denied that there is almost a uniformly high quality of men and women who are attracted to the Administrative Service in every country. Ogg, while giving a description of the British Civil Service, remarks that amongst the members of this service "some are impelled by a sense of civic duty; some are drawn by the prospect of a career in a field in which the way is open for talent and industry irrespective of family connections; some no doubt are appealed to by a profession which promises a steady and assured income, without much risk".

(The defects of bureaucracy—officialism, narrowness of conception and departmentalism—have been counter-balanced by ministerial responsibility in countries with Cabinet form of government. The Civil Service in these countries is very responsive to public opinion and its members adjust themselves to the changes of the policy. Then, there is excellent *esprit de corps* which the service has always displayed and the interests it has exhibited for its own improvement. The schools of Public Administration and societies of Civil Servants, which exist in every country, aim at maintaining the high ideals and traditions of which Civil Servants everywhere are justly proud.) But it must, however, be remembered that bureaucracy is like fire, which is invaluable as a servant but ruinous when it becomes the master. Bureaucracy must be organised on a sound basis and control by Parliament must be proper and effective, if it is to remain as a servant. Thus, the administration, and particularly the higher bureaucracy, must be constantly alert both to the purposes of the political leaders of the country and to the needs as well as desires of the public.

### SUGGESTED READINGS

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|-------------|--|
| Barker, E.  | : <i>Reflections on Government</i> , Chaps. III, X.          |
| Brown, B.E. | : <i>New Directions in Comparative Politics</i> , Chap. III. |
| Bryce, J.   | : <i>Modern Democracies</i> , Vol. II, Chap. LX.             |

- Blunt, E. : *The I.C.S.*
- Chapman, Brain : *The Profession of Government: The Public Service in Europe.*
- Dealey, J.Q. : *The State and Government*, Chaps. XII, XIII.
- Finer, H. : *The British Civil Service.*
- Finer, H. : *The Theory and Practice of Modern Government* (1954), Chaps. XXII, XXVI.
- Garner, J.W. : *Political Science and Government*, Chap. XXII.
- Jennings, W. Ivor : *Cabinet Government.*
- Lapalombara, Joseph : *Bureaucracy and Political Development.*
- Laski, H.J. : *Grammar of Politics*, pp. 356-410.
- Laski, H.J. : *Parliamentary Government in England*, pp. 262-301, and Chap. VI.
- Mill, J.S. : *Representative Government*, Chap. XIV.
- Riker, William H. : *Democracy in the United States.*
- Sidgwick, H. : *Elements of Politics*, Chap. XXI.
- White, Leonard D. : *Introduction to the Study of Public Administration*, Chaps. XXII, XXIII, XXIX, XXX.
- Willoughby, W. F. : *Government of Modern States*, Chaps. XIV, XVI.
- Willoughby, W.F., and Rogers, L. : *Introduction to the Problems of Government*; Chap. X.
- Wilson, Woodrow : *Constitutional Government in the United States*, Chap. III.



## Consultative and Advisory Bodies

**Need for Consultation.** The leadership of the Executive, which we discussed in the preceding Chapter, is a clear recognition of the fact that legislative and administrative initiative lies with the Executive. This is essentially due to the advance in the functions of the State from protection and order to justice and welfare. The concept of welfare is a broad one. It embraces economic prosperity, moral well-being and the whole system of values that compose the goal of good life. The result is that the field of government activities is immensely increased and the State has reached from its starting point of man's need for protection to the terminus of an ethical ideal.

If the government is to wisely perform its multi-functions and advantageous results obtained therefrom, it imperatively calls for alterations in the technique of doing a job. A government committed to planning and control must proceed on democratic lines and obtain the co-operation of those affected by its policy. There is another point in it. Planning and control require exercise of wide discretion and judgment which may involve invasion on the sanctities of private life. If welfare is to be real and a matter of substance, it, then, necessitates that those whose liberties are to be limited and even narrowly restricted must be consulted before they come into operation. "The proper use of advisory bodies," maintained Sir Arthur Salter, "is the right answer of representative democracy to the challenge of corporate states." It is, thus, essential that committees composed of well-informed persons equipped with necessary talent and commanding the confidence of the people and interests concerned should be created for consultation and guidance. Such committees may be intended to serve the cabinet as a whole, and through it Parliament as well, or they may function simply in relation to a particular department or office. The government, in short, should be surrounded by organised committees which it must consult in all its transactions. It means prior consultation of all interests which are likely to be effected by the proposed policy or undertaking of the government.

**Consultation should be representative.** But consultation must be representative and not selective. If the government appoints people of its own choice, it is no consultation. Selective consultation is a biased expression of opinion which a government can always secure. Real consultation means eliciting opinions from representatives nominated by the interests concerned. In almost every aspect of social life, with which

government is likely to be concerned, there are representative organisations which have come into being for the purpose of protecting specialised interests. In the field of industrial relations there are trade unions and employers' federation. The Chambers of Commerce in almost all civilised countries have a public status. In local government there are associations of different types and the local authorities themselves are representative bodies. There are similarly associations concerned with the welfare of children or of animals, with social services, with scientific and cultural matters and with numberless other activities embracing the life of man. Sometimes, however, there are rival associations each claiming to represent the same interests. In some cases there are associations representing opposed interests. Government must be certain that if they take consultation at all, it must be representative of all shades of opinion so that it should be comprehensive, otherwise they will be accused of partisan consultation and, therefore, of partiality. If for example, the Government of India decides to remove protection from the sugar industry, it must consult all the interests involved in the manufacture of sugar—the representatives of the manufacturers, cane growers, workers, both skilled and unskilled, Chambers of Commerce, distributors, and consumers. They should be really the representatives of all the interests concerned and not those nominated by government whose views are already known and coincide with the proposed policy of the government. Modern researches in Social Psychology have now abundantly proved that no public activity can succeed unless "it functions as an arm of the people". Mere consent means the approval of the ideas and actions of those who put them up for consent. But genuine agreement is the integration of the activities of many who have reason to participate in those activities and own them to be their own.

**Purposes of Consultation.** The purposes of consultation may be various. A government may genuinely seek information or advice when, for instance, it is not clear how great a demand there is for some reform, or in what shape a reform is wanted. In such a position it might proceed by way of *ad hoc* enquiry through a commission, such as the States Reorganisation Commission appointed by the Government of India, or a Parliamentary Select Committee or a Departmental Committee. The interested associations would then be represented by witnesses who would be summoned along with other witnesses chosen for their expert knowledge or practical experience of the matter under enquiry. Such witnesses, or the associations they represented might, also, be invited to submit or might themselves volunteer to submit memoranda containing statements of their points of view. "A government," says Professor Laski, "which embarks on a policy must offer the means of judging that policy. The opinion it has elicited by organised inquiry is fundamental to that end. The evidence it has collected, the facts at its disposal, can never be refused to its subjects if it is to build its opinion in the reasoned judgment of its citizens."

Then consultation might be undertaken, and this would apply especially when government has some legislation definitely in mind, in order

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1. Laski, H., *A Grammar of Politics*, p. 133.

to test the reactions of its proposals. Such consultation, which helps to shape a bill before it is introduced, enables a government to forestall parliamentary criticism and to take the wind out of the sails of the Opposition. Consultation for this purpose is also sought by Departments of the Government which have been given power of making rules and regulations under the authority of a statute. In this way the Department is sometimes enabled to make adjustments in the proposed rules, avoiding the unpopularity which it would have incurred otherwise. Finally, a further purpose of consultation may be to keep in touch with public opinion about the administration for which the Department is responsible. That is, the Department must be capable of explaining itself and defend its actions. Consultative Committees and advisory bodies provide a means of "articulate rational defence". Administration does not operate in a vacuum.

**Advantages of Consultation.** The advantages of such a method of consultation are obvious. It provides, in the first place, the means of access to all interests involved in the decision to reach the government. They get adequate opportunity to give an authoritative and representative exposition to their opinions and, at the same time, get an opportunity to learn and appreciate the point of view of the government. They can, accordingly, oppose or support the policy and decisions of the government more effectively and their appeal to public opinion is direct and based upon actual knowledge and established facts. It is a well balanced judgment capable of organising true public opinion. Secondly, the representatives of the interests concerned can supply to the government authentic and valuable information on which details of the measure may be constructed. They can even suggest the probable results of the working of such measures. "They form, in brief, a deposit of expertise upon the different aspects of policy which, effectively used, create an atmosphere of responsibility about governmental acts. If the Minister acts upon their opinion, he is at least building upon a foundation of experience; if he rejects them, the creation of an opposition and, as a consequence, of the discussion that is the life-blood of democratic governance, is adequately assured."<sup>2</sup> Again, those who stand outside the machinery of government can only be made responsible when they are associated with it. "The only way to do things for people," emphasises Laski, "is to make them do things for themselves."<sup>3</sup> Such a step is really a democratic step, because by making the people responsible we make their will effective and increase their inventiveness. The people feel that it is their government. This is the essence of democracy. Finally, the policy formulated and decisions taken by the Cabinet Ministers may not always be in the public welfare. The Ministers are essentially swayed in their decisions by two important considerations: the solidarity of the government and the unity of the Party. They have always to keep in mind that the resignation of a powerful colleague, if he happens to disagree with the official policy, must be prevented. Even a compromise may be arrived at which may not be coincident with the public welfare. But such an eventuality is not likely to happen if there are proper

2. *Ibid.*, pp. 80-81.

3. *Ibid.*, p. 268.



and representative channels of consultation. Here the discussion "is rooted in the principles of its subjects; personal considerations are, *a priori*, out of place. The Minister is dealing directly with minds and only indirectly with votes. He is being driven to counter reason with reason. He is being trained in responsibility to those whose desires must shape his will."

**Advisory Committees.** Laski, therefore, rightly maintains that "the first great need of the modern State is adequately to organise institutions of consultation". The democratic and scientific technique of administration demands the presence of permanent and continuous organs of consultation before decisions are reached by the government. In a sense the cabinet system is a method of government by consultation, because a Minister can, and he does, in the administration of his department, seek the advice of either his colleagues or the Prime Minister. In fact, all vital decisions are decided by the cabinet and inter-departmental problems are closely deliberated upon by the ministers concerned and decisions are taken as a result of this consultation. The same is true of the Senate in the United States. The original object for creating the Senate, apart from its legislative functions, was to serve as an advisory council to the President. Although this object could not be realised, yet its various committees are a powerful check and aid to the powers of the President. The Standing Committees in the Continental countries of Europe not only advise, but also control the administrative departments of government. The Commissions in France, as they are called, which were originally intended to be simple organs of criticism and suggestion, have now become the engines of control of the executive. They go even so far as to dominate the administrative departments of the government, and the vigour and the independence of the great Commissions are, indeed, the main reasons for the weak parliamentary position occupied by the cabinet in France.

But all such committees in France are constitutional instruments. The combination of executive work and advice, however, can best be done extra-constitutionally by executive action. The best illustrations of such committees are the Committee of the Imperial Defence and the Economic Advisory Council in Great Britain, and similar committees in other countries too. The former dates from 1904, and is charged with investigation, reporting and recommending on all questions of imperial defence. The Economic Council is charged with the duty of studying and reporting to the cabinet on commercial, industrial, and other economic problems of general interest.

Equally important is the rise of advisory committees attached to particular Departments. The right of the departmental heads to consult informally individuals or groups outside of the public service had existed in Britain for generations past. As far back as 1899, provision for departmental advisory committees composed of non-governmental heads began to be made, e.g., Board of Education, Board of Trade, etc. During World War I a large number of such committees were provided for by executive orders. The Machinery of Government Committee warmly

endorsed the advisory committee plan so long as the advisory bodies were not permitted to impair the responsibility of Ministers to Parliament. The general testimony is that departmental advisory committees are rendering valuable service not only by bringing to the departments information and advice based on first-hand knowledge, "but by inspiring greater public confidence in administrative authorities as being guided by such information and advice rather by sheer theory of bureaucratic presupposition".<sup>5</sup> The Advisory Committees in Britain and India have no power to direct or control administrative work, or to dictate policy. The ultimate decision is entirely that of the departmental head. But he always decides after he has taken the responsible experts in confidence and heard their point of view. The business of the committees is solely to discuss and advise.

The Government of India, in pursuance of the Cabinet decision of July 1954, constituted a number of informal consultative committees of members of Parliament. They have been formed to enable members to have a glimpse into the working of Government Departments. Each Committee consists of about thirty members. These informal committees do not have any statutory functions or responsibilities. Nothing will be referred to them for decision. It would be for the Minister concerned to determine what to discuss in these committees and what to divulge to them. There were five hundred and odd Advisory Committees attached to the machinery of the Central Committee in 1962. Some new committees have been set up since then, the more important being: Board of Trade, Advisory Committee on Economic Policy, National Advisory Council, National Defence Council, Citizens' Central Council.<sup>6</sup> The five Zonal Councils are also advisory bodies intended to bring better co-operation and co-ordination between the States included in each Zone.

**Functions of the Advisory Committees.** No one can deny the utility of the advisory bodies. "We think," reported Lord Haldane's Committee on the Machinery of Government, "that the more they are regarded as an integral part of the normal organisation of a department, the more will ministers be enabled to command the confidence of Parliament and the Public in their administration of the services which seem likely in an increasing degree to affect the lives of large sections of the community."<sup>7</sup> A government which summons Advisory Committees, places before them the policy which it intends to pursue, and listens to the criticism of the interests concerned, is, undoubtedly, very different from a government which secures a support of its policy as a result of party allegiance.

But what should be the functions of such committees? Here it must be emphasised, again, that Advisory Committees have no executive function. They are extra-constitutional institutions and the ultimate decision is that of the government. Even if they have a statutory existence, they are to advise about administration; they are neither to direct nor to

5. Ogg, *op. cit.*, p. 111.

6. Shriram Maheshwari, *Committees in the Central Government (India)*, Supplement to *Indian Journal of Public Administration*, Vol. IX, No. 3, July-September 1963, pp. 186-200.

7. Laski, H.J., *A Grammar of Politics*, pp. 380-93.

control it. Nor are they to prepare any policy. It is the sole concern of the Minister concerned or the Cabinet. Generally, the functions of the Advisory committees may be reduced to four. First, the committee has the right to be consulted on all proposed bills before they are initiated in the legislature. The Department should submit all proposed bills to the committee for criticism. A free and frank discussion should be organised at a conference between the Minister and his permanent officials on the one side, and the departmental Advisory Committee on the other. The bills should be explained and examined threadbare. The committee might offer its suggestions leaving the Minister free to reject or accept them.

Secondly, the committees should be consulted upon general administrative policy. It would, of course, depend upon the discretion and choice of the Minister to decide about the matters that he should refer to the committee of consultation. The Minister may not refer any matter at all to the committee and act without consultation. It would, however, be advisable if it is made possible for each member to suggest matters for discussion and empowering him "in the event of ministerial objection, to an explanation of the hostile attitude".<sup>8</sup>

The committees, in the third place, should be given the widest scope to make suggestions. Here, indeed, the Advisory Committees can make useful contribution and prove their real utility. The members chosen on the committees for their expert knowledge and representing special interests are in a best position to suggest ideas and it is highly beneficial for a government to explore them. In the opinion of Laski, "it is one of the few ways open to us to correct the dangers of professional conservatism. A Committee of Ministry of Justice, for example, upon which the lay mind as well as the legal mind found place, could indicate a score of places in the law where the need for revision and experiment is essential."<sup>9</sup>

We have already discussed how the legislatures of today are flooded with work, and with the increase in the area of State activity the major portion of detailed and exhaustive statutes has been replaced by skeleton acts the details of which are, in various ways, filled in by the Departments concerned. This growth in the power and discretion of the Departments, which also amounts to increase in the powers of the permanent Civil Servants, needs to be checked and the advisory committees are the best instruments to serve this purpose. Laski makes a very concrete proposal in this connection. He says, "No department shall issue orders under its delegated powers without having first consulted the appropriate consultative committee; and that in the event of objection from the latter the order shall not be issued without the specific approval of the Legislative Assembly."<sup>10</sup> This is a negative function and the fourth in enumeration.

Committees to advise may, thus, be consulted at any stage in the process of administration—in the formulation of policy, in its application or administration or in the review of policy and its application, and

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8. *Ibid.*, p. 331.

9. *Ibid.*, p. 382.

10. *Ibid.*, p. 383.



finally, on orders, rules and regulations which the department will issue under its delegated powers. In practice, as Professor Wheare says, "it is at the stage of application or administration that committees to advise are most widely used, while the committee to inquire is more usually found either at the stage of formulation or at the stage of the review of policy."<sup>11</sup> Professor Wheare has arranged committees into six types: (1) committees to advise; (2) committees to inquire; (3) committees to negotiate; (4) committees to legislate; (5) committees to administer; and (6) committees to scrutinize and control. And "the principle upon which arrangement has been made is that of the function of process," he says, "which the committee carries out rather than of the institution of which it forms a part or with which it is connected."<sup>12</sup>

All these functions are merely consultative and advisory. Consultation does not imply shifting of responsibility to the consultative bodies. The responsibility of the Ministers, to repeat again, must remain unimpaired. Laski says that the method of seeking consultation is not intended "to divide power in order to make it responsible; what is essential is to make coherent the organs of reference to which the power must defer."<sup>13</sup> There is inherent in the notion of committee an idea of a derived status; it lacks original jurisdiction.

**Composition of the Advisory Bodies.** What judgment can we make upon the value of the committees to advise? In determining the usefulness of a committee to advise its size is, undoubtedly, important. Prof. Wheare says, "It may be said, with a little dogmatism perhaps, that if a committee to advise is so large that its members have to stand up and address each other, it is unlikely to be effective."<sup>14</sup> The Departments bring advisory committees into existence because they feel the need of obtaining knowledge either from experts or from interested parties. Where discussion proceeds by way of conversation rather than of set debate and the members sit round the table, the discussion is effective, difficulties are removed, misunderstanding eliminated, objections brought to light, compromises suggested and finally a *modus vivendi* reached. This is the real purpose of consultation. If the size of the committees is small, there is give and take of discussion round the table and appreciation of each other's point of view. Professor Wheare, accordingly, suggests that where an advisory body is large, it can be effective only if it breaks itself into sub-committees, and meets as a full committee to discuss the reports of these sub-committees, or to discuss certain questions of general principle. "In fact most advisory committees," as Professor Wheare says, "are small, and where they are large they break up into panels or sub-committees. If they do not do so it is difficult to escape the conclusion either that they do not mean business or that they are intended to do business." Fifteen or nearabout is an effective number.

"It is wise to guard against advisory committees being too big," further says Professor Wheare, "it is wise also to guard against the mem-

11. Wheare, K.C., *Government by Committees*, p. 45.

12. *Ibid.*, p. 2.

13. Laski, H., *A Grammar of Politics*, p. 381.

14. Wheare, K.C., *Government by Committees*, p. 63.

bers themselves being too big." There is general tendency to appoint to some committees, particularly at the national level, eminent and distinguished persons "who are found in practice so eminent and so busy and so remote from the day-to-day work of the organisation they represent, that they are in fact not of much use as advisers". They "circulate" from one advisory committee to another, seldom knowing about the business of any one committee. They are so much preoccupied in other matters that they have neither the time nor the initiative to master a subject and contribute to the discussion which is the purpose of the advisory committees. Professor Wheare, accordingly, suggests that advisory committees composed of less eminent people can really do valuable work, "The best advice is often to be obtained," he says, "from persons of less eminence, still so little in demand that they are able to master fully one branch of knowledge or activity." Shriram Maheshwari, in his paper on the Advisory Committees in the Central Government (India), suggests that "while appointing persons on these committees, the primary consideration should be their qualifications, experience and probity." He further suggests that since the committee work is in addition to a man's principal avocation "he should be required to submit his occupation work-load and other pre-occupations, and the Government should evolve suitable yardsticks to ascertain objectively whether he may spare time adequate enough for the work of the committee."<sup>15</sup>

Then, the consultative committees must necessarily be representative of two kinds of members: (a) majority of the total membership should be chosen representatives of the interests concerned with and affected by the decisions of the Department; and (b) a small minority nominated by the Minister to represent technical knowledge and experience, and special interests indirectly affected by the policies of the Department.

Laski suggests nomination for a period of three years subject to the renewal of the term depending upon the absolute discretion of the appointing body. As regards the election of the members, he says, that they "should preferably, be elected by the Councils of their nominating bodies, miners by the executive of the Miners' Federation, teachers by the Council of the National Union of Teachers, and so forth. They should also be paid for their services sufficiently to compensate for lost time, but not enough to make their election sought after on grounds of income."<sup>16</sup>

The emphasis on representative element is of a recent origin. It is, in fact, the result both of the maturity of the representative principle in the modern world "and of the recognition that though legislatures may have the plenitude of authority, they have not the plenitude of wisdom."<sup>17</sup>

**Economic Councils.** In addition to the advisory committees there has been in one country after another, a movement in recent years, to set up central economic councils and to confer on these bodies advisory functions. It is a way of integrating the economic life of the nation and

15. Supplement to the Indian Journal of Public Administration, Vol. IX, No. 3, July-September, 1963, pp. 196-197.

16. Laski, H., *A Grammar of Politics*, p. 330.

17. Finer, H., *The Theory and Practice of Modern Government* (1954), p. 454.

the government takes the initiative of securing the co-operation of associations of labourers, professional men, farmers, manufacturers, traders, bankers, in fact, all major interests concerned in the act of production and consults them in formulating policies of legislation or administration. Economic councils, therefore, aim to achieve the ideal of national industrial planning within the framework of the capitalist society.

A capitalist economy is the very negation of planned economy. It permits and emphasises economic freedom and the economic activities are the result of independent decisions arrived at by a multitude of persons. There is no co-ordination and the owners of land, labour, capital and organising ability are free to use their factors of production as they please and dispose of their earnings as they wish. This incoherent pursuit of economic activities is responsible for many economic and political ills and the device of economic councils aims to remove that incoherency in order to maximise the interests of the society as a whole.

The mechanism of modern round-about production is highly complex and delicate. The producers in one industry are consumers of other industries. The separate trades are one another's customers. So intimately related are the many units in productive machinery that boom or depression in one tends always to produce boom or depression in others. This is supplemented by another fact. The workers in one industry are the consumers of the products of their fellow workers engaged in another industry. Distress and depression in one industry consequently creates a vicious circle and there is depression all round. Just as depression in one industry tends to spread to others, so also the prosperity in one industry spurs others to greater efforts. There is, therefore, synchronism of depression or prosperity, because bad times and good times in various industries synchronise or occur approximately at the same time.

No factor of production can, thus, act in isolation. So the urgent need is to co-ordinate and regulate different and independent economic activities by setting up national economic councils jointly representing labour organisations, associations of industrial employers, chambers of commerce, professional associations, agricultural, banking and insurance groups and consumers' societies. The object of these councils is to assist the Ministry in planning economic legislation and to help Parliament in its consideration of such measures as the council may deem necessary and advantageous in the interests of the nation. It may, accordingly, sponsor a large number of comprehensive investigations in problems like unemployment, housing, industrial organisation, labour relations, international trade and so on and these investigations may become the basis for subsequent legislation. In fact, economic councils are, in every country, now regarded as valuable aid in the formulation of national policy in economic matters. It must, however, be remembered that their functions are essentially investigatory and advisory. They have no legislative functions and have no power to make laws. They simply provide "the regular political authorities with vocational representative bodies whose research work and counsel can be of considerable value."



The Weimar Constitution of 1919, provided for the setting up of a national economic council and it came into being in 1920. It had a membership of 326 persons arranged in 10 occupational groups. These groups were represented according to their respective economic and social importance. The council did not possess the power of legislation, but the Constitution required that important social and economic measures proposed by the Ministry should be submitted to it for its opinion before being introduced in Parliament. The council was also empowered to introduce such measures on its own initiative and to have its proposals and views presented to the **Reichstag**, whether or not the Ministry assented to them.

Composed as it was of the representatives of important classes and interests of society, who were experts in their respective spheres, the National Economic Council of Germany was sufficiently capable of furnishing the Legislature with expert advice and keeping it informed of the legislative needs of the various interests which it represented.<sup>19</sup> In the first ten years of its existence, the Council "rendered useful service in considering proposed economic and social legislation, initiating occupational measures for parliamentary consideration, and giving the legislative authorities the benefit of its presumably expert advice."<sup>20</sup>

In several other States economic councils have been set up or provided for by the Constitution. The Constitutions of Yugoslavia, Poland and Danzig, all provided for the establishment of such councils to assist their Legislatures in making laws in respect of economic and social problems. More or less similar councils were also established in Italy, Spain and Portugal. In France, too, a national council was set up by decree in 1925. In 1936, the council was enlarged and given a permanent statutory basis. Its general assembly consists of over hundred members representing the consumers, the labouring classes, the agriculture, the commerce, employers' associations, the educationists, the bankers, a small group of expert economists, etc. The Prime Minister is the ex-officio President of the Council. The statutory functions of this body are to investigate national economic problems, and to advise the government thereon. All bills of an economic character, when introduced in Parliament, are to be forthwith submitted by the Ministry of the National Economic Council. All decrees, if they have economic implications, must be submitted to it. "In addition, the ministry may submit any economic question to it for study, and the same may be done by any parliamentary committee. Or the council may take up any economic problem and submit recommendations on its own initiative."<sup>21</sup> Any Plan, or any bill dealing with a Plan, of an economic and social character is submitted to it for its advice. The recommendations of the council are made to the Prime Minister, but its reports must be laid before Parliament.

The British Economic Council consists of twenty persons. The Prime Minister is the ex-officio Chairman. The Chancellor of the Exchequer and three other Ministers are its ex-officio members. It also includes such other Ministers as the Prime Minister may name and varying

19. Garner, J.W., *Political Science and Government*, p. 664.

20. Ogg, *op. citd.*, pp. 650-51.

21. Munro, *op. citd.*, p. 454.

representatives of business, co-operative, trade union, scientific and other interests. "On the whole," says Ogg, "the council's usefulness has not yet been demonstrated convincingly."<sup>22</sup>

Recently, a further consultative device has been operated by the Board of Trade in the shape of "working parties". The functions of these bodies are to examine the organisation of the main consumer's goods industries, their methods of production and distribution, and to make recommendations for increasing efficiency. In each "working party" one-third of the members belong to the employers, one-third go to the Trade Unions, and one-third are independent members nominated by the President of the Board of Trade. The President of the Board has also nominated an independent chairman.

"It has become plainer and plainer," says G.D.H. Cole, "to those who have watched the operation of the economic councils in Germany and other countries that bodies which are based on the balancing of forces between the representatives of employers and workers are incapable of any real constructive achievement."<sup>23</sup> The interests of the employers and the employees are essentially conflicting and there is very little hope to reconcile them under the existing economic structure of society. The result is that the economic councils in all the countries where they exist have shown no sign of any independent initiative leading towards a reconstruction of the industrial system. The powers of these councils are merely investigatory and advisory. They have been given far too little authority to achieve any considerable result. Moreover, in most cases their membership has not been such as to stimulate confidence and hope that they are likely to develop into satisfactory planning bodies. "They have been constituted by too little of experts and too much of representatives of conflicting industrial interests, and their members have been, for the most part, far more intent on preserving the structure of the capitalism and preventing the growth of Socialist enterprise than on developing any coherent national industrial plan."<sup>24</sup> But Cole's plea is for vocational representation which has hardly found favour in any country.

Referring to the national economic council of Germany, Laski said that its power of initiating measures in parliament "tends to lead it to multiply suggestions for legislation without having the responsibility to carry them into effect."<sup>25</sup> It entailed upon Ministers a serious burden of extra labour. "The need to appear and speak before it, the knowledge that its activity is always encroaching upon the margin of the Reichstag's competence, the satisfaction of its immeasurable appetite for documents and information, are rather a hindrance than a help to the channels of administration proper."<sup>26</sup>

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22. *Op citd.*, p. 110, note.

23. *Intelligent Man's Guide Through World Chaos*, p. 593.

24. *Ibid.*

25. *Grammar of Politics*, p. 88.

26. *Ibid.*

## SUGGESTED READINGS

- Cole, G.D.H. : *A Guide to Modern Politics*, pp. 411-414.
- Cole, G.D.H. : *The Intelligent Man's Guide Through World Chaos*, pp. 591-595.
- Finer, H. : *The Theory and Practice of Modern Government* (1954), pp. 452-458.
- Laski, H.J. : *Grammar of Politics*, pp. 80-85, 266-270, 375-387.
- Ogg, F.A. : *European Governments and Politics*, pp. 110-112, 650-654.
- Shriram Maheshwari : *Advisory Committees in the Central Government, (India)*. Supplement to the Indian Journal of Public Administration, Vol. IX, No. 3, July-September, 1963, pp. 186-200.
- Vernon, R.V., and Mansergh, N. : *Advisory Bodies, A Study of their uses in relation to Central Government, 1919-1939*.
- Wheare, K.C. : *Government by Committees*.



## The Judiciary

**Importance of Judiciary.** The administration of justice, the chief task of the judiciary, comprises the third organ of the governmental machinery. The welfare of citizens greatly depends upon speedy and impartial justice. Lord Bryce has aptly remarked that there is no better test of the excellence of a government than the efficiency of its judicial system. The judiciary is the guardian of the rights of man and it protects these rights from all possibilities of individual and public encroachments. The feeling in an average citizen that he can rely on the certain and prompt administration of justice maximizes his liberty. If there is no adequate provision for the administration of justice, the liberty of the people is jeopardized, for there is no definite means which should ascertain and decide rights, punish crimes, and protect the innocent from injury and usurpation. "If the law be dishonestly administered," says Bryce, "the salt has lost its flavour; if it be weakly and fitfully enforced, the guarantees or order fail, for it is more by the certainty than by the severity of punishment that offenders are repressed. If the lamp of justice goes out in darkness, how great is that darkness."<sup>1</sup>

In ancient polity the executive and the judicial functions were combined. The early monarch was the fountain of justice. But it afterwards came to be realised that justice could not be secured if the judicial and the executive functions were combined in one person. The concentration of power to interpret and administer in the same hands has always historically been associated with tyranny.<sup>2</sup> Every citizen needs the amplest protection against the danger of capricious interpretation of law. The modern State is, accordingly, inconceivable without a separate judicial organ functioning independently and impartially.

**Principles of modern justice.** Such being the importance of judiciary, it is necessary to know some basic principles of almost universal application on which modern justice rests. The first, of course, is that there is in every State one judicial system, and one law, both the creation of the State, and administered by judges and other officials appointed for that purpose. Every member of the community is subject to that law, and is entitled to its protection. It means that law must apply to all men as men and equal protection of life for every one under the law, and

1. Bryce, J., *Modern Democracies*, Vol. II, p. 284.

2. Laski, H.J., *A Grammar of Politics*, p 129.

equal penalties for everyone violating it. Justice must, accordingly, be administered strictly according to law and no one may be punished for any offence, which law does not consider an offence. Punishment must only be what the law prescribes for a particular offence and it must always remain the same for the same kind of offence. The object of punishment is not vengeance, but the protection of society from the criminal and those who may imitate him. Independence of the judiciary is also practically universally accepted principle of modern justice. It is a crime for the judges to receive "a bribe or for any body to offer them one, or to threaten them, or bring any kind of pressure to bear on them. It is also wrong for the government to interfere, by trying to secure condemnation or acquittals; verdicts must be given in accordance with the facts and with the law governing the case, and not to suit the desires of politicians or other influential persons". This means that in modern civilised life the character, means and methods of justice raise or debase a nation in the estimation of other people. Laski expresses the same idea rather emphatically when he says, "when we know how a nation-State dispenses justice, we know with some exactness the moral character to which it can pretend."<sup>3</sup>

**Functions of the Judiciary.** Administration of justice is, thus, the chief function of the judiciary. Courts are agencies for the decision of disputes between individuals, and between them and the State, and for the trial of persons accused of crime. But while deciding disputes and punishing criminals, courts do a number of important things beyond the settlement of controversies. The first thing that the courts do is to investigate and determine facts. In the great majority of cases coming before courts, whether civil or criminal, the law involved is clear and no legal issue is presented. The function of courts in all such cases is simply to determine facts according to the recognised procedure. The procedure is that the parties involved in the case produce evidence. Evidence consists of oral or written statements of witnesses. With the facts determined, the next step is to apply existing law to such facts and render decisions. To a judge it is a matter of no importance whether in his opinion the law is good or bad, just or unjust. He is to accept the law as it is and apply to the ascertained facts. A judge is, therefore, the interpreter of law.

But it may happen, as it does frequently, that the existing law may be ambiguous and it may be so worded that it is difficult to determine its exact meaning or with constantly changing conditions, issues are presented which were not considered when the laws were made or the existing laws may be inconsistent with each other and doubt may exist in respect of which two provisions or which of two laws, should govern in a particular case. It is here that the courts have the very important function of determining what the law is, what is its scope and meaning, and when there is an apparent conflict between different laws, which shall prevail. Judges weigh the merits of the case and are guided in their decisions by the principles of justice, equity and commonsense. And in doing so they set precedents to be applied and followed by others in similar or analogous cases. Under the doctrine of what is known as *stare decisis* (the mat-

3. *A Grammar of Politics*, p. 542.

ter has been decided), a legal principle enunciated in a decision made by a court is deemed to be of a controlling force in similar or analogous cases thereafter arising. Apart from removing ambiguities in the law and filling in the gaps, the judges adopt and recognise customs and, thus, give them the decisive support of the public power. Here the judges act in a quasi-legislative capacity and judge-made law is an important feature of the judicial system in Britain, the United States, India, etc. The judges are, thus, interpreters of law as well as law-makers and a large volume of law is made of 'judge-made' laws.

There is yet another way in which the courts can, and to a certain extent do, participate in the determination of law. This consists in the duty which the constitution may impose upon judges of the Supreme Court of a country to give advisory opinions. The Constitution of India confers on the President the power to refer to the Supreme Court any question of law or fact which in his opinion is of public importance. He may refer such a question not only where it has actually arisen, but also where it appears to the President that it is likely to arise. The President can refer to the Supreme Court whether a proposed bill will be *intra vires* of the legislature or not. Similarly, the Canadian Supreme Court Act, 1906, authorises the Governor-General to refer important questions of law and fact and obtain the opinion of the Supreme Court. Some of the American States impose a duty upon Justices of their Supreme Courts to give advisory opinions on legislative proposals whenever the legislatures may feel grave doubts concerning their constitutionality. In all such cases the judges participate in the determination of law, as the advice asked from the courts may have considerable influence in the creation of law. In some countries a more formal pronouncement of a court, known as a declaratory judgment, may become a device of law-making. Here the chief purpose is to secure a clarification of the law and the courts set forth what the law requires, when parties request such opinions, without compelling them to go to the expense of litigation. The opinion rendered is binding, not advisory. Declaratory judgments have been used increasingly since 1900 by British Courts and in the United States since 1920.

Another function performed by courts is that of preventing infractions of law and the violation of rights. Originally, courts had no such function. But gradually courts in Britain and the United States took the position that it was not necessary that private parties should wait until their rights had been actually violated before they could appeal to the courts for protection. If such persons had sufficient reasons to believe that attempts would be made to violate their rights, they could appeal to the courts and the courts would thereupon issue orders prohibiting such attempts or at least restraining their commission until the rights of the parties were determined. The orders so issued are known as "restraining orders" or "injunctions". If the authority to which such orders are issued disobeys them, the courts have the power to punish for contempt. In the beginning courts exercised this power rather arbitrarily and it had been the cause of a good deal of criticism. Now legislation determining the powers of courts to issue injunctions and punishment for contempt has been enacted in most countries.



The judiciary is also the guardian of a federal constitution. In a federation, constitution delimits the jurisdiction of the various branches of government. Neither the Central Government nor the federating units can pass legislation which is contrary to the prescriptions of the constitution. This necessitates the presence of an agency entrusted with the function of deciding whether the ordinary legislature has not transgressed the provisions of the constitution and it is *prima facie* a strictly judicial function. In some countries their constitutions specifically provide for such a court competent to declare a law passed by the legislature as *ultra vires*. In States where such a constitutional provision is not made, it is assumed that it is inherent in or incidental to the judicial power to question the validity of any law duly made by the legislature. The Constitution of India empowers the Supreme Court to interpret the constitution and decide all cases of dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. There is no direct authority in the Constitution which empowers the Supreme Court of the United States to declare the constitutionality or otherwise of state or federal acts. Chief Justice Marshall definitely decided in *Marbury v. Madison* (1803) that the courts had the inherent right to declare the acts of Congress invalid and since then *Marbury* case forms the basis of this important authority exercised by the Supreme Court.

But with emergence of the Welfare State the role of the judiciary has become arduous. Human liberty and human progress function not in isolation or antithesis but in synthesis and the law has to reconcile the two concepts. Individual rights must, accordingly, be defined in the context of public purpose, social utility and personal and social development. At times property rights are given precedence over the public good. The letter of the law may ordain so, but it may be flagrant violation of the spirit of the constitution. Chief Justice Gajendragadkar, of the Supreme Court of India, while delivering the Feroze Gandhi Memorial Lecture in New Delhi, observed, "If the judicature is the custodian of the Fundamental Rights of the citizens, it is also the interpreter of socio-economic philosophy underlying the welfare laws." The judges must realise that the constitution is a living document meant for the welfare of the living human beings. Its words, therefore, must not be interpreted in a static manner or in a strictly dictionary sense, if the constitution is to endure long.

Judges may be called upon to conduct a Judicial enquiry into some serious incidents resulting from the alleged errors of commission or omission, on the part of some public servants or agents of the government. A Committee or a Commission, presided over by a Judge, may also be appointed to enquire into some important and complicated matters which require thorough investigation. The Commission may even consist of a single judge as in the case of Life Insurance Corporation of India, or the Commission, known as Das Commission, to enquire into the allegations made to the President against the Punjab Chief Minister, Pratap Singh Kairon. A similar enquiry was held against the former Chief Min-

ister of Jammu and Kashmir, Bakshi Ghulam Mohammad. The demand for judicial commissions of enquiry is much too frequent in India and the people are vocal to make the demand even on a minor affair or even when there exists no cause for it.

The judiciary may also perform a variety of miscellaneous functions. Strictly speaking, these functions are not essentially judicial in character, but have been assigned to the courts as a matter of economy and convenience. In many cases where the ownership, use or rights in property are in dispute, courts will take over the administration of such property pending the final settlement. This occurs in the settlement of the estates of deceased persons, and where corporations have failed to live up to their financial obligations. In these cases the court appoints a receiver or administrator to take over the property and administer it subject to its orders. In the case of minors, the court appoints guardians and trustees;

In a number of other ways courts at times perform functions of an administrative character, for example, granting of licences, naturalization of aliens, performance of marriage ceremonies, appointing certain officials.

### INDEPENDENCE OF THE JUDICIARY

**Need for Independent Judiciary.** Justice is considered to be one of the divine attributes and a judge is described as a blind folded person who holds the scale of justice, which he administers even-handed. In ancient times the function of the judge was vested in the priest. Though in a modern State religion has nothing to do with the machinery of government, yet the sanctity attached to the office of a judge remains unchanged. The functions of a judge are multifarious and arduous. However just and sound the laws be, unless applied by an upright, honest and impartial authority, citizens cannot secure justice. The judges should accordingly, be men of keen intellect, high legal acumen, integrity, dignity, and independence of judgment. If they "lack wisdom, probity, and freedom of decision, the high purposes for which the judiciary is established cannot be secured". Bacon has succinctly said, there is no worse torture than the torture of laws. The existence of these qualities in judges is ensured when judiciary is independent and impartial. Impartiality and independence go together. By the independence of the judiciary we mean that judges should exercise unfettered discretion in the interpretation of laws and administration of justice, and they should remain uninfluenced in the discharge of their duties. The maintenance of the independence and impartiality of the judiciary both in letter and spirit is the basic condition of the operation of the Rule of Law and, as such, ensuring the liberty of the people, and human progress.

Independent judiciary is as much the need of a popular government as it is that of governments of an autocratic character. In the latter it is essential to protect the people against the arbitrary interference and oppression of one single person, and in the former it is essential to protect the minorities against the tyranny of the majority. Truly speaking, no tyranny is so great as that of a majority and a people establishing a popular government had never been oblivious of this. They devised means to avoid this



danger and entrusted to the courts the duty of seeing that no branch of government exceeded its powers and that no temporary majority shall infringe the rights of the minority. This point was most cogently explained by President Taft of the United States in his address on the "Judiciary and Progress". He said, "But the judiciary are not representative in any such sense, whether appointed or elected. The moment they assume their duties they must enforce the law as they find out. They must not only interpret or enforce valid enactments of the legislature according to its intention, but when the legislature in its enactments has transgressed the limitations set upon its powers in the constitution the judicial branch of government must enforce the fundamental and higher law by annulling and declaring invalid the offending legislative enactment. Then, the judges are to decide between individuals on principles of right and justice. The great body of the law is unwritten, determined by precedent, and founded on eternal principles of right and morality. This the courts have to declare and enforce. As between the individual and the State, as between the majority and the minority, as between the powerful and the weak, financially, politically, socially, courts must hold an even hand and give judgment without fear or favour. In so doing they are performing a governmental function, but it is a complete misunderstanding of our form of government or any kind of government that exalts justice and righteousness to assume that judges are bound to follow the will of the majority of an electorate in respect of the issue of their decision."<sup>6</sup> The judges must, accordingly, do everything possible to create confidence among the people in the purity, fairness and impartiality of the administration of justice.

The need for independence of the judiciary has assumed an added dimension. Under modern conditions of Welfare State the more modern government interferes, administers, and regulates, the more urgent is the need to preserve a check on the way these activities affect individuals and groups. The helplessness of the individual in the absence of such control is all too obvious in systems where the judiciary is either dependent or powerless. The courts must, therefore, be separate, independent agencies, bound by their own rules of procedure and determining cases according to publicly known law.

The factors which ensure independence of the judiciary and enable judges to fearlessly discharge their duties are:

① 1. **Mode of Appointment of Judges.** Since judicial decisions demand developed judgment, knowledge of contemporary social and economic conditions, thorough knowledge of law, and the highest personal integrity with ability to be impartial and non-partisan; it is prerequisite that judges should be selected by some method which will emphasise these qualities and minimize political considerations. There is wide variation of opinion as to the method by which a merited selection can be made.

Three methods of appointing judges are followed in practice: (a) Election by the Legislature; (b) election by the people; and (c) appointment by the executive. Election by the Legislature is not a common and ac-

6. As cited in W.F. Willoughby's *The Government of Modern States*. pp. 433-434.



credited method of appointing judges, because this system is a violation of the principle of the Separation of Powers, and it makes the judiciary subservient to the Legislature. Moreover, election by the Legislature means election of party candidates. When party affinities intervene in the selection of judges, then, merit is discounted and impartiality disappears. Independence of the judiciary, under these circumstances, cannot be ensured. "Such party election encourages a type of judge far removed from the ideal of fairness and reasonableness which judicial decision demands."

The system of popular election of judges was first introduced in France in conformity to the theories of popular sovereignty and the Separation of Powers. It now prevails in some of the Cantons of Switzerland, in a few States of the United States of America and in Soviet Russia in the case of lower courts. Other Communist States, too, have followed the Soviet pattern. But popular election of judges is even more objectionable than election by the Legislature. "Of all the methods of appointment," says Laski, "that of election by the people at large is without exception the worst." Popularly elected judges can never be impartial, honest, independent and dignified. Popular election means party election and judges so chosen become subject to popular passion and prejudice. It tends to lower the character of the judiciary. The position becomes still worse when judges are elected for short periods. "The desire to court popularity is a temptation few will be able to resist when their re-election is dependent on their popularity." This would create strong temptation in judges to shape their judicial decisions and, indeed, their whole judicial conduct in such a way as to meet the approval of those to whom they have to look for re-election. The voters, too, are not in a position to equitably weigh the qualities which a judge should necessarily possess. Moreover, candidates for judicial office make frequently poor candidates. They cannot possibly put before the electorate either a programme or a personal plea concerning their judicial conduct. The result is that a politician becomes a judge whose entire outlook is partisan, and there can be no independence of the judiciary.

The appointment of judges by the Executive is the most common and the best available method of choice, and it is in practice in nearly all countries of the world. It is claimed that the Executive is the most appropriate agency to judge the qualities necessary for a judicial office. Judges chosen by the Executive are likely to be independent of popular influence and political or sectional considerations. The opponents of this method contend that personal favouritism and political consideration may determine the appointments and instances are cited from Britain and the United States to support their point of view. It is maintained that often the appointees are those who had an active political career rather than a judicial one before their appointment, as was the case with Chief Justice Warren, former Governor of California. Laski, accordingly, does not consider simple nomination by the Executive as an adequate system. He suggests that all judicial appointments should be made "on the recommendation of the Minister of Justice, with the consent of standing committee

of the judges, which would represent all sides of their work." This method, no doubt, represents the best guarantee we could have that appointments are made consistent with the qualities essential in a judicial officer. In Britain, and many countries in the Commonwealth of Nations, the judiciary is generally selected from among practising lawyers. On the Continent of Europe, where court systems are unified under the Ministry of Justice, the judiciary is a career. The entrants are selected as a result of competitive examination and are promoted from court to court. In India, too, recruitment to the subordinate courts is through competitive examination whereas in the case of courts above, it is according to the method as prescribed in the constitution, but the appointing authority is the Executive.

2. **The Judicial Tenure.** The judicial tenure is as important as the method of appointment in securing the independence and impartiality of judges. The most common judicial tenure is during good behaviour with compulsory retirement at a definite age. In most of the Swiss Cantons and some of the States of America, where judges are popularly elected, there are short terms of tenure subject to re-election. But popular election of judges and their short tenures are not politic as they tend to rob the judge of their independence. Freedom and independence are best secured by long tenures. Judges appointed for short terms are likely to abuse their position. They would make the best of their short term disregarding all canons of justice and even the principles of decency. Good behaviour till the age of retirement is, therefore, the method which is the best and it is now generally recommended and followed. "The standard of good behaviour for the continuance in office of the judicial magistracy," said Hamilton, "is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy, it is an excellent barrier to the despotism of the prince; in a republic, it is no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright and impartial administration of the laws." Finally, a good-behaviour tenure is necessary to secure full and minute knowledge of law and judicial precedents which constitute one of the most important sources of strength in the judicial office. In the course of a long and uninterrupted judicial career, a judge can and does acquire a complete knowledge of precedents, the nature and operation of laws as in other countries, of the psychology that determines human conduct and the social and economic changes which characterise a dynamic society. To understand man and the principles on which law is built is as important as to know the law itself. This obviously cannot be gained by one whose tenure is brief and precarious.

3. **Removal of Judges.** Good-behaviour tenure involves the question of removal of judges from office. In all States provision is made for the removal of corrupt and inefficient judges. But it must be a difficult process so as to obviate the abuse of power and its capricious operation. (If the tenure of a judge is to depend upon the pleasure of a particular

8. *Ibid.*, p. 549.

9. As quoted in Garner, J.W., *Political Science and Government*, p. 800.

First See the last line of this book



person or agency neither independence nor impartiality can be ensured because the slightest ill-will incurred by a judge may result in the termination of his services. It is, therefore, deemed desirable that the process of removal of a judge from his office should involve much consideration and "should pass through the hands of more than one person". In Great Britain a judge can be removed by the King on a joint address by Parliament indicting him for corruption or moral turpitude. In the United States the judges of the Supreme Court are removed by impeachment. The process of impeachment is that the House of Representatives prefers the charges and the trial is held by the Senate. In India, judges held office, before 1947, during the pleasure of the Crown. Judges of the Federal Court and of High Courts were removed from office by the Crown for misbehaviour or infirmity, on a report of the Judicial Committee of the Privy Council. The Constitution of India provides that a judge of the Supreme Court and of a High Court shall be removed from office by an order of the President after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.<sup>10</sup> A difficult method of removal, where more than one agencies intervene, ensures security of office and it is one of the most important factors responsible for the impartiality of the majority party in power. But in countries where the system of recall exists, the independence and dignity of the judiciary has considerably deteriorated. Judges become the plaything of the people and, accordingly, this method is opposed for the same reasons that popular election of Judges is deemed unwise.

4. **Salaries of Judges.** Next to permanency of office nothing contributes more to the independence of the judiciary than a fixed and adequate salary. It was judiciously remarked by Hamilton that "in general course of human nature a power over a man's subsistence amounts to a power over his will". To give to judges courage and firmness in the dispensation of justice, it is necessary that they should be confident of the security and adequacy of their salaries. The salary must be paid regularly and it should be sufficient enough to befit the status of a judge. Low-paid judges are very often ill-behaved and susceptible to corruption and bribery. Finally, the salaries should not be alterable during their tenure of office. When in 1931, a special law was passed in Britain to enable the salaries of all government servants, from the Prime Minister downwards, to be reduced as an economy measure, the judges protested against their inclusion as involving an encroachment upon their absolute independence. The salaries of the judges of the Supreme Court and High Courts in India are specified in the Constitution. But the President has the power to reduce their salaries during the continuance of the Proclamation of Financial Emergency.

5. Apart from the adequacy of salary, it is equally essential that the conditions of service of the judges should be such as to ensure their independence and impartiality and are consistent with the dignity of the office that they hold. They should be in receipt of handsome allowances



as permissible under rules and be in the enjoyment of other amenities. Their postings and transfers must not be subject to the vagaries of the Executive if they are to perform their duties with dignity, integrity and efficiency. And above all the fear of tomorrow must not haunt them. There should exist a specific provision for payment of adequate pension after retirement or retirement compensation. Rules framed regarding termination of their services and removal from office should be such as to ensure them against any kind of arbitrary action.

6. **Qualifications of Judges.** "The importance of the judiciary in political construction," writes Sidgwick, "is rather profound than prominent.... in determining a nation's rank in political civilisation, no test is more decisive than the degree in which justice, as defined by the law, is actually realised in its judicial administration.... The men who are to make justice in the courts must be legal luminaries, learned and skilled in their profession. An incompetent judge not fully conversant with legal niceties and technicalities is sure to taint the eminence of the judiciary. It is again essential that a judge must be reputed for his impartiality and independent views and he scrupulously avoids straying in politics. The strength of the administration of justice depends upon gaining the confidence of the public in general and the litigant public in particular. (All these qualifications can best be secured if judges are selected from the bar) those who have spent their life in the legal profession and have specially prepared themselves for the difficult task of knowing and interpreting law.

7. **Separation of the Judicial Functions.** It is highly desirable that the judicial and executive functions should be distinct and separate from one another. The same person should not be a prosecutor as well as a judge. If both these functions are combined in the same person there cannot be justice worth its name. If the prosecutor sits also as a judge there is abuse of judicial authority and capricious administration of justice. The most familiar example in this respect is that of the Deputy Commissioner-cum-the District Magistrate in India, who combines the Executive and the judicial functions. It is a well-recognised complaint that there can be neither independence nor impartiality of the judiciary under such a system. The subordinate Magistrates cannot go against the wishes of the District Magistrate who is also the executive authority in the district. They decide cases, very often, as the District Magistrate expects them to do. Sir Harvey Adamson, at one time Home Member to the Government of India, pointed out that "the exercise of executive control over the subordinate Magistrates by whom the great bulk of criminal cases are tried is the point where the present system is defective. If the control is exercised by the officer who is responsible for the peace of the district there is the constant danger that the subordinate Magistracy may be unconsciously guided by other than purely judicial consideration". Many States in India have now separated judicial and executive functions but there still remains much to be achieved. The Directive Principles of States Policy as embodied in the Constitution, too, enjoin the separation of both these organs of government in order to ensure justice and as a safeguard against encroachments on the rights and liberties of the people.

## PRINCIPLES OF POLITICAL SCIENCE

### ORGANISATION OF THE JUDICIARY

Regardless of their differences in the system of law and courts, States recognise certain well-accepted and uniform principles of judicial organisation. It is essential that the Executive should not attempt to influence or control the procedure and judgments of the courts. It is equally essential that the Legislature grants them powers and funds adequate for the efficient performance of their functions. It is also imperatively important that the courts should be independent agencies rendering decisions according to publicly known laws and not as instruments of the regime in carrying out its political and general purposes. For example, the Soviet Law of August 1938 prescribes that it is the duty of the Soviet Courts "to educate the citizens in a spirit of devotion to the fatherland and to the cause of socialism, in the spirit of an exact and unfaltering performance of Soviet laws, careful attitude towards Socialist property, labour discipline, honest fulfilment of State and public duties, respect towards the rules of the Commonwealth". The primary function of the Soviet courts is, therefore, the protection of the social and State system of the USSR. The Soviet judiciary is a part of the regular administration like a Ministry of Finance or Agriculture. It does not have even the semblance of separate and independent branch of government. The Soviet judges, too, have never claimed to be independent of the policy of the government. Really, they take pride in the fact that the courts participate directly in the historic venture of the construction of the Communist society. This aspect sharply distinguishes the Soviet judiciary from that of other democratic countries which are wedded to the principles of independence and impartiality of the judiciary and the Rule of Law.

**Courts of Appeal.** (The organisation of the judiciary is not similar to either the Legislative or the Executive departments. Courts all over the world are organised on an ascending scale one above another with a right to appeal from the lower to the higher courts. At the apex there is a Final or Supreme Court with powers of revision or cessation, i.e., annulling the decision of a court or judicial tribunal.) The function of the court of appeal is to make sure that the law is being interpreted in substantially the same fashion in all the different parts of the judicial structure and to reverse decisions which seem to be based upon an erroneous interpretation of the law. In performing their work, courts of appeal must have in mind primarily the general principles that seem to be involved in any case which reaches them, rather than the concrete merits of the immediate controversy. Technical rules governing appeals generally are adjusted to this conception. The cases which reach the highest courts are normally argued there solely on the basis of certain specific dubious points of legal interpretation. In some countries, the highest court of appeal is also vested with an original jurisdiction and such specified cases are tried there.

A court of appeal consists of several judges generally sitting together in a bench and reaching their decisions by a majority vote. Usually the court gives an opinion explaining the legal grounds for its decision. Sometimes individual judges give separate opinions, including those judges who disagree with the majority decision and whose opinions are conse-

quently called "dissenting opinions". The judicial opinions of the higher courts are regularly published and these opinions constitute a major authoritative source of law in countries following Anglo-Saxon jurisprudence.

**Trial Courts.** Trial Courts primarily or exclusively conduct the initial trial of cases. In a trial court both facts and law must be considered. The plaintiff, or prosecution in a criminal case, submits evidence to support his contentions as to the facts of the case. In civil cases much of the evidence, particularly in countries following Roman law jurisprudence, may be in the form of "depositions" sworn to by witnesses outside of the actual trial. In common law countries the evidence in criminal cases must in general be submitted orally in court by the witnesses in person. The testimony submitted orally by witness for the plaintiff or prosecution is subject to "cross-examination" by the defence. After the evidence of both the parties has been concluded, arguments are submitted by their respective lawyers and, then, the court renders decision.

In all countries there are special trial courts for petty cases involving small civil claims or minor infractions of criminal law. A single judge usually presides and makes the decision in such courts, and proceedings are likely to be highly informal. Other courts handle the trial of more serious cases, and judges of these courts occupy a relatively high rank. Sometimes an intermediate sets of courts is provided for the trial offences or of civil claims of an intermediate grade of seriousness. In most jurisdictions some trial courts with highly specialised jurisdictions exist alongside those which handle the more ordinary cases, for example, courts dealing with the probate and administration of the estate of deceased persons, juvenile delinquency, and claims for compensation for actions of the governmental services.

(In countries with federal policy there are usually two sets of Courts, Federal and State Courts. The Federal Courts exercise the national or general jurisdiction of the national or Central Government and the State Courts exercise the local jurisdiction in each federating unit. In the United States of America the federal government has its own judicial organisation consisting of the Supreme Court, Federal Courts of Appeal, and the District Courts. There is at least one District Court in each State. If the State is sufficiently large with huge population there may be many such courts in that State, each having a specified territory under its jurisdiction. Then, each State has its own judicial organisation, and its own law and procedure applicable to the civil and criminal jurisdiction of the States. In India, too, there is the federal judicial organ—the Supreme Court—and the State judiciary. The jurisdiction of these courts differs. But the Supreme Court of India, unlike the one in the United States, has appellate, civil and criminal jurisdiction throughout India.) Moreover, it has no organisation of its own in the States.)

(In spite of these common features there is, however, considerable variety of judicial organisation in modern States. In the Common Law countries the courts, except those of appeal, usually consist of a single judge, while in France and other Continental Countries, all courts, except



those of the justices of peace, are "collegial", that is to say, they consist of a bench of judges, and no judgment is valid unless rendered by at least three judges. "Plurality of Judges," it is believed, "affords a safeguard against arbitrariness and enables the court in criminal cases to resist more effectively the influence of the public prosecutor." There is a proverb in France, *judge unique judge inique*, which gives expression to French antipathy to judgment rendered by a single judge. In the trial of serious crimes it is usual to empanel a jury of impartial citizens to determine the guilt or innocence of the accused under instruction as to the relevant legal rules by the presiding judge or judges. In Common Law countries a similar use of a jury is traditional, but now it is less common in practice in serious civil cases as well. Secondly, in France, and other Continental countries, there is unity of civil and criminal justice, which means that civil actions and criminal cases are for the most part handled by the same courts and not by separate courts as in Britain and in the United States. In the third place, in the Anglo-American countries, judges go on "circuit", holding courts in different places for the convenience of litigants, that is, the courts go to the litigants. On the Continent of Europe the courts are "sedentary" or localised, that is, courts commonly sit only at one specified place and the litigants take their cases to have them decided.

In Britain and the United States there is the Rule of Law. This means that all citizens—private individuals and public officials—are equal before law and they are amenable to the same courts and the same law. In France, and the rest of the Continental countries, there are two sets of judicial organisation: ordinary courts and administrative courts. Administrative courts deal with the controversies of public officials in their relations both with private individuals and between themselves. The Administrative Law, which is applied in the Administrative Courts, is quite distinct from the ordinary law which the ordinary courts apply. In the Anglo-American countries precedents or 'judge-made' law constitute an integral part of the judicial process and are applied by courts to identical cases. Continental countries discourage judge-made and judicial precedents. Finally, in the United States judiciary is the guardian of the constitution and it can declare any law *ultra vires*. In countries like Britain courts must accept and apply law as it emanates from the legislature. They have no jurisdiction to declare it constitutional or unconstitutional.

## RELATION OF THE JUDICIARY TO THE EXECUTIVE

**Relation of the Judiciary to the Executive.** In spite of the emphasis on the separation of the judiciary, as the *sine qua non* of the independence and impartiality of the judges, the Executive exercises a certain control over the judiciary inasmuch as judicial decisions can only be enforced by the Executive supported by the force at its command. Should the Executive fail to take the necessary steps to enforce a decision, the judiciary would have no means of compelling such action, except the writ of *mandamus*, which in those circumstances might be disregarded. Besides, the appointment of judges is made by the Executive and although it does not exercise any control after appointments have been made, yet the complexion of the judiciary may be influenced by the party in power responsible for making such appointments. In English-speaking countries

a lawyer who maintains professional reputation and, at the same time, attains some prominence in politics may normally expect his elevation to the Bench. In the United States, the President appoints federal judges subject to approval by the Senate. As a result of "Senatorial Courtesy" the selection of the District Court Judges is made by the Senators from the State where the vacancy occurs if they are members of the same political party to which the President belongs. In countries where tenure of office during good behaviour is the rule, the character of the appointment of judges may determine the course of government for years to come. For example, the appointment of John Marshall, to the Supreme Court of the United States and who believed in federal supremacy, ensured a long line of decisions upholding the right of the federal government to control various matters, even after those who favoured the right of the several states to larger autonomy had gained control of the Legislative and Executive branches.

In Continental European Countries there exists what may be called the "career service". In such countries the judicial service constitutes a branch of the general civil service and is usually entered only at its lowest levels by persons who have just completed their legal training. All the higher positions are normally filled by promotions from the lower ranks. This means judges are subject to a certain control of the political authorities who decide and determine promotions. (But more important are the judicial powers that are still exercised directly by the Executive department, e.g., the Court Martial and the enforcement of Administrative Law. The right of granting pardon still belongs to the Executive and it is the direct survival of its original judicial function.)

(The Judiciary, too, in its turn has considerable powers of administration and control over the Executive. In all democratic countries the Executive is amenable to the jurisdiction of the courts. Its actions can be challenged and appropriate remedies sought by means of a writ and if the exercise of authority is in excess of the powers vested in it by law such an action may be nullified. The rights of courts to uphold their dignity by instituting contempt of court proceedings and punishing offenders is a great check exercised by the judiciary on the Executive. Finally, the judiciary has to perform a number of functions which are, strictly speaking, executive in character, e.g., granting of licences, issuing of permits, appointing of guardians and trustees, official receivers, etc.)

## RELATION OF THE JUDICIARY TO THE LEGISLATURE

**Relation of Judiciary to Legislature.** [The Legislature makes law and the courts interpret and apply it. This is the most obvious relation between the Judiciary and the Legislature. The legislature sanctions all appropriations necessary for the maintenance of the judicial department. In this way the legislature controls the judiciary. Except in the United States and India, where the federal judiciary is provided for and its tenure fixed by the constitution, judicial departments are created by legislative statute and may be modified or abolished by legislative enactment. Even in the United States, Congress prescribes the number of judges, fixes their salaries, and creates new courts. In many States certain judicial powers have been

retained by the Upper House of their legislatures. In Britain, the House of Lords is the highest court of appeal, although this function is actually performed by the Law Lords. The framers of the American Constitution, influenced by the theory of the Separation of Powers, limited the judicial powers of the Senate, except that it can try cases of Impeachment against high Executive officials. Finally, judges in certain States are appointed by the Legislature. In the United States the Senate ratifies all judicial appointments made by the President/

The Judiciary may exercise considerable control over legislation, wherever it has the right, either by influence or by express grant, to review laws in order to determine their constitutionality. The power of judicial review seems to have reached its greatest height in the United States, despite the fact that there is no express provision in the Constitution which empowers the Supreme Court to declare the constitutionality or otherwise of federal or state Acts. The principle on which it is based was set forth by John Marshall in the famous case of *Marbury vs. Madison* (1803). Justice Marshall reasoned that the Constitution is the Supreme Law of the land and the judges are bound by oath to give effect to it. When the court is called upon to give effect to a statute passed by Congress, which is clearly in conflict with the supreme law of the Constitution, it must give preference to the latter and hold the former void and of no effect. In India, there is no express provision declaring the Constitution to be the supreme law. Nor does the Constitution expressly empower the courts to declare laws void. But the power of judicial review by the Supreme Court is subject to no controversy, although its scope of power is not as extensive as that of the Supreme Court of the United States.

In Britain, sovereignty of Parliament is admitted and, as such, no court will declare an Act of Parliament unconstitutional. But enactments of minor legislative bodies may be declared illegal. British courts have also refused to enforce executive orders deemed to have been issued without sufficient legislative authority. They may also declare void rules and regulations which offend the parent law.

[The inter-relation of the judiciary and the Legislature can best be found in case-law or judge-made law. Judges not only interpret law, but they also make it. Whenever a case before a court for decision is not covered by law it, is the duty of judges not to determine what the legislature meant, but "to guess what it would have intended on a point not present, if the point had been present". In this way, judges legislate to fill up the *casus omissus* or the cases of omission. Judges also create a law for the particular case in determining the exact meaning of law, expanding its details and applying the general principles of justice or morality. In Britain, India and the United States, judicial decisions are cited as precedents and are considered binding in subsequent cases on the principle of *stare decisis*. Judge-made law, thus, forms a large part of the system of jurisprudence. In countries where codes based on Roman Law are used, as in France, precedents are not considered binding.



## THE RULE OF LAW

*Meaning of the Rule of Law.* The "rule of law" is recognised as one of the very important characteristics of the British Constitution. It means that in Britain the ordinary law should be everywhere supreme, and every person is subject to the ordinary law courts. There is nothing which may be characterised as arbitrary power. Every action of the government must be authorised by law, either by law passed by Parliament, or by the ancient principles of Common Law which have been recognised for many hundred years. The test is that all actions of government can be appealed against in the ordinary law courts. This remains the general rule, though in recent years there have been encroachments upon it and have excited some alarm.

The "rule of law" is the product of centuries of struggle of the people for the recognition of their inherent rights. In Britain the Constitution does not confer specific rights on the citizens. Nor is there any Parliamentary Act which lays down the Fundamental Rights. Yet, the people enjoy maximum liberty and judiciary is their unfailing guardian, because there exists "the rule of law." The government have power only to carry out the law, not to do whatever they think fit. The Latin tag *salus populi suprema lex*—the welfare of the people is the supreme law—cannot be used by the government as an excuse for pursuing its own idea of the public interest without regard to legality. Anything done by government officials either beyond law or in excess of law is subject to control by courts. The ordinary law of the land is of universal application and there are no divisions of separate system of law, for instance, into one for officials and another for ordinary citizens. The maxim, in brief, carries with it the rule that the remedies of the ordinary law will be sufficient for the effective protection of the rights of the citizens.

*Dicey's Analysis.* The conception of the "rule of law" was given classical formulation more than three quarters of a century ago by A.V. Dicey. The "rule of law", according to Dicey, has three meanings:

(1) "It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of government. Englishmen are ruled by the law and by the law alone; a man may, with us, be punished for a breach of the law, but he can be punished for nothing else." It means that the executive has no arbitrary powers over the individual; no powers that had not been sanctioned either by Parliament or by the Common Law.

This principle implies that no person may be arbitrarily deprived of life liberty, or property; no one may be arrested or detained except for a definite breach of law which must be proved in a duly constituted court by law. Trial must be held in an open court with a free access to the public. The accused person has the right of being represented and defended by a counsel and in all serious criminal cases he should be tried by a jury. Judgment is rendered in an open court with a right to appeal to High Court. The presence of these rights reduces to the minimum the possibilities of executive arbitrariness and oppression.

(2) "It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts." It means that everyone is subject to the ordinary law of the realm and can have his rights determined in the ordinary courts.

There are two implications in it. First, equality of every citizen, irrespective of his official or social status, before law. Secondly, there is one kind of law to which all citizens are amenable. All public officials, high or low, are under the same responsibility for every act done by them. If public officials do any wrong to an individual or exceed the power vested in them by law, they can be sued in the ordinary courts and tried in the ordinary manner, and are subject to the provisions of ordinary law. The equality of all in the eyes of law minimises the tyranny and irresponsibility of the executive. Dicey while elaborating the equality of all before law says, "with us every official, from the Prime Minister to a constable or a collector of taxes, is under the same responsibility for every Act done without legal justification as any other citizen". The general legal theory holds that an executive official is privately liable whenever he oversteps the precise authority which the law assigns him.

(3) "The 'rule of law' lastly, may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of the constitutional code, are not the sources, but the consequences of the rights of individuals, as defined and enforced by the courts,..." It means that the main principles of the constitution, such as the right of personal liberty or of public meeting, have been set up on the foundation of the old common law and not as things derived from any general constitutional theory." Rights, in brief, do not flow from the constitution, but from judicial decisions, as in the famous *Wilkes' case*.

**Limitations to the Rule of Law.** But the "rule of law" is now subject to serious limitations. The great increase in the activities of the State during the past forty years or so has limited the "rule of law" far more seriously. It is difficult for Parliament to find time to discuss the details of bills which must necessarily contain a long string of highly technical clauses. And in many matters those technical clauses require frequent modifications to meet a changing situation. Therefore, the practice has grown up of enacting skeleton legislation the details of which are to be filled in by the appropriate government department and are to have the force of law. These departmental regulations and orders once made are immune from criticism by courts, unless they conflict with the provisions of the parent law, because they have been given the force of law beforehand. As long ago as 1909, in a case in which the Board of Agriculture authorised the compulsory sale of a farm, Mr. Justice Darling found the Board to be "no more impeachable than Parliament itself".

(Moreover, whenever there is delegated legislation there is discretionary authority. If discretionary authority is in violation of the rule of law, then the rule of law is inapplicable in any modern State.) When Dicey, in 1885, wrote the first edition of his *Law of the Constitution*,



the primary functions of the State were preservation of law and order, defence and foreign relations. Today, the functions of the State are more positive and they regulate the national life in multifarious ways. Discretionary authority is, thus, in every detail inevitable. What it is essential to emphasise here is that discretionary power should not mean arbitrary power, i.e., power exercised by an agent responsible to none and subject to no control.

② (A still more serious innovation is the practice of authorising officials by statute to decide disputes between their departments and private citizens.) Acts of Parliament, such as Acts dealing with Factory, Trade Boards, with Public Health, or with Town and County Planning, are examples of the kind of enactments that bestow judicial powers upon administrative agencies. Such decisions are usually final, and there is no appeal from them to the ordinary law courts. (This means that the Minister for the Department, whoever has been authorised by statute, has the right to decide questions which affect the rights and interests of the private citizens.) (The officer who actually makes the decision remains unknown to the public. His decisions are made privately, and he is not bound, as the ordinary courts are, by rules of procedure and evidence.) Evidence may be excluded at will and interested parties are seldom interviewed. The government departments are not courts in Dicey's sense and they do not follow the judicial mode. And yet they decide cases involving their own actions. The old theory, therefore, that the Executive in Britain is strictly accountable to the courts for the legality of all its acts has acquired a somewhat formal character.

Again, the second meaning given by Dicey to the rule of law requires some qualification under the existing conditions. In the first place, (there remain, even after the operation of the Crown Proceedings Act, 1947, certain privileges and immunities which are open to public authorities and their officers.) Among these may be noted the Public Authorities Protection Act, 1893, which, as amended by Section 21 of the Limitation Act, 1939, "imposes a severe time limit upon actions brought against public authorities and their officers in respect of acts or omissions occurring in the course of official duty."<sup>13</sup> These provisions make (it necessary that proceedings against public officials for the excess, neglect, or default of the public authority must be started within six months of the Act, otherwise they lapse. Heavy penalty by way of costs is to be paid if a citizen's suit against public authority fails. Judges are not liable for anything said or done in the exercise of their judicial functions, even if they exceed their jurisdiction, unless the judge ought to have known the facts ousting his jurisdiction.)

Then, in common with other civilized countries, Britain, too, gives immunities to the persons and property of other States, their rulers and diplomatic agents, in the form of exemption from process in the courts, but not from legal liability as such.<sup>14</sup> There are even instances where internal political expediency has required the conferment of special immu-

13. Wade, E.C.S. and Philips, *Constitutional Law*, p. 55.

14. *Dickenson v. Del Solar* (1963), I.K.B., 376.



nities. Moreover Trade Disputes Act, 1906,<sup>15</sup> prohibits the bringing of any action against a trade union in respect of a tort.

**Conclusion.** In spite of these qualifications the "rule of law" still remains a cardinal principle of the British Constitution. It is true that delegated legislation and administrative jurisdiction are both the worst enemies of the "rule of law". The development of delegated legislation and administrative justice, however, are not only inevitable but, also, with proper modifications and safeguards, desirable. The motive at work is not that of a despot as Lord Hewart asserted in his book, *The New Despotism*. (British officials retain a respect for the tradition of the "rule of law" in which they have been bred.)<sup>16</sup> "Their object is usually to avoid, not parliamentary control, but parliamentary delays; not the authority of the law; but the obstructiveness of wealthy litigants."<sup>17</sup> Moreover, the question whether a department is acting *ultra vires* can always be brought before the ordinary courts. In this way, Ministers and officials can at least be prevented from exceeding their statutory powers.

What (rule of law) precisely (involves) is (the absence of arbitrary power, "effective control of and proper publicity for delegated legislation, particularly when it imposes penalties; that (when discretionary power is granted the manner in which it is to be exercised should as far as practicable be defined); that every man should be responsible to the ordinary law whether he be private or public officer; that private rights should be determined by impartial and independent tribunals; and fundamental private rights are safeguarded by the ordinary law of the land".<sup>17</sup>

*After this it is liable to become arbitrary.*

### ADMINISTRATIVE LAW AND COURTS

**Ordinary and Administrative Courts.** In France and other Continental European Countries there are two systems of courts. One of these is a system of ordinary courts; the other is a system of administrative courts. The ordinary law and the regular courts are concerned with the administration of justice as between man and man while administrative law is concerned with the adjudication of rights as between a citizen and his government. If a citizen finds that he has been wronged by the official of the State, or the action of that official is the result of bad judgment, or is arbitrary in nature, he can seek redress, but he must seek it from special tribunals which are maintained for that purpose and which apply Administrative Law as distinguished from ordinary law. Continental jurisprudence is largely based upon the Roman Law. It regarded the State as an end itself, the individual only as a means to the perfection of the great body politic. From this, it naturally followed that those who served the State in an official capacity were entitled to special consideration and for their official acts they could not be made amenable to ordinary law and ordinary courts.

**Origin of the Administrative Law and Courts.** The Administrative

15. Section 4(d).

16. Derry, K., *British Institutions of Today* (1948), p. 83.

17. Wade and Phillips, *Constitutional Law*, p. 58.

+ But new meaning is given to rule of Law.

Law and Administrative Courts first found their origin in France as a result of historical circumstances and political beliefs of the time. Before the French Revolution there was a general repugnance to the control which the judiciary exercised over the administrative authorities. The persons actively concerned with the Revolutionary movement felt that if judges were allowed to decide controversies between the State and its administrative authorities, on the one hand, and private individuals, on the other, it would result in judicial interference with the operations of the government and impair the efficiency of the administration. Montesquieu's theory of the Separation of Powers had also a great ideological appeal. The result was that in the period immediately following the Revolution, many laws were enacted preventing the judiciary from interfering in the work of administration. Even punishment of judges, who should encroach on administrative functions, was provided in the Penal Code.

The imposition of absolute prohibition on the judiciary resulted in an unsatisfactory situation. Administrative authorities were freed from all judicial control, and for the private individual there were no other means for the relief from administrative excesses except an appeal to their political representatives. According to Revolutionary ideas that was a sufficient guarantee against the abuse of authority. But it was otherwise as "the administration possessed a dominant position, and it practised domination". An inevitable reaction to this was many developments which finally helped to improve the position of the individual in his relationship to the administration. The first step was taken by Napoleon Bonaparte by establishing councils of juris consults. At the national level the Council of State was set up, and in the departments the Prefectorial Councils. Out of these developed the present system of Administrative Courts spreading to other lands as well.

**Administrative Law is Case-Law.** Administrative Law in France may, thus, be defined "as a system of jurisprudence which, on the one hand, relieves public officials from amenability to the ordinary courts for acts performed in their official capacity, and, on the other hand, sets up a special jurisdiction to hold them accountable". It determines:

- (i) the position and liabilities of all public officials;
- (ii) the rights and liabilities of private citizens in their dealings with public officials as representatives of the State; and
- (iii) the procedure by which these rights and liabilities are enforced.

But Administrative Law is not codified. Some of the rules have been established by the decrees issued from time to time, while the most important and by far the largest part of it depends upon the decisions of the Administrative Courts. In this respect Administrative Law "some-what resembles the common law which has been slowly built up in the regular courts by one decision after another". It is essentially a case law.

**Justification of the System.** "The French system of administrative law, and the very principles on which it rests," observed Dicey, "are quite unknown to English and American judges and lawyers." This might have been true when Dicey wrote the first edition of his book,

The Law of the Constitution, but it is not so today. Even at that time Dicey did not give to Administrative law its real meaning. Legal relationships are a significant part of the administrative function in the execution of policy. Every administrator is, in effect, a law-enforcement officer. He may rightly or wrongly enforce the law. He may also determine a dispute between parties which arises under the law and the rules and regulations made thereunder. Certainly the administrator is frequently called upon to apply an interpretation of the law to a peculiar set of circumstances. At times, in some countries, he may be participant in a legal battle in special or regular courts to defend or ensure his position. Some critics maintain that these statements are broader than are necessary to illustrate the scope of administrative law, but as Finer says, "In short, administrative law is no more mysterious or sinister than simply the law relating to public administration."<sup>18</sup> Wherever there is administration, there is administrative law, though there may not be separate courts for administrative adjudication. In the nature of things there are generally such courts and are named as tribunals. The inevitableness of the growth and existence of Administrative Law and Administrative Tribunals and their place in modern administration is fully established.

Similarly, Dicey was utterly wrong in contending that the system of Administrative Law and courts is antithetic to the Rule of Law and is, therefore, the embodiment of arbitrary or irresponsible power. He pointed out that justice could not be expected from the administrative courts, because the officials constituting the courts would be naturally favourably inclined towards their fellow officials. Nor can the instruments of government, themselves concerned in influencing the policy of the government, be expected to administer justice and adversely affect the policy of the government. Impartiality and independence cannot be secured under such circumstances and individual rights are always liable to be sacrificed when administration is both the offender and judge of the offence.

But in the light of the French experience, it is not true to say that there can be no liberty under a system of Administrative Law and Administrative Courts. On the contrary, French men have always considered it the cornerstone of their liberties. There is also no justification for suspecting Administrative Courts of partiality in favour of public officials. The French Council of State, as the highest administrative tribunal, has established admirable traditions of impartiality. Duguit affirmed that the great body of case-law worked out by the Council of State, which enjoys considerable prestige as the chief arbiter of claims of citizens against alleged misuse of power of administrative officials, affords the individual "almost perfect protection against arbitrary administrative action". A private citizen in France gets more real redress from the Administrative Courts than an Englishman gets from the ordinary courts. Administrative Courts are constituted of expert administrative officials and their judgments are bound to have the nature of expert decisions. There are many administrative technicalities and departmental problems which a judge presiding over an ordinary court of law may not be able to under-

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18. Finer, H., *The Theory and Practice of Modern Government*, p. 924.



stand. As a layman, he is liable to give a wrong judgment. Then, the access to Administrative Courts is so easy and inexpensive. The procedure is so simple and the decisions are speedy.

There is virtue in the Administrative Law being not codified. It is primarily a case-law and a case-law is flexible and, thus, adaptable. A law built up in this way covers a wide range. To sum up, as Dr. Garner says, "there is no other country in which the rights of the private individuals are so well protected against administrative abuses and the people so sure of receiving reparation for injuries sustained for such abuses" as in France.

### SUGGESTED READINGS

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|---------------------------------------|--|
| Blachlay, F.F.                        | : <i>Administrative Legislation and Administration.</i>                  |
| Bryce, J.                             | : <i>Modern Democracies</i> , Vol. II, Chap. LXII.                       |
| Corwin, E.S.                          | : <i>The Doctrine of Judicial Review.</i>                                |
| Dicey, A.V.                           | : <i>The Law of the Constitution</i> , Chap. XII.                        |
| Finer, H.                             | : <i>The Theory and Practice of Modern Government</i> , Chap. XXXVI.     |
| Frank Jerome                          | : <i>Courts on Trial.</i>  |
| Garner, J.W.                          | : <i>Political Science and Government</i> , Chap. XXIV.                  |
| Goodnow, F.J.                         | : <i>Principles of Constitutional Government</i> , Chaps. XVIII-XIX.     |
|                                       | : <i>The Law and the Constitution</i> , Chaps. VI, VII, and Appendix II. |
| Laski, H.J.                           | : <i>Grammar of Politics</i> , Chap. X.                                  |
| Lowell, A.L.                          | : <i>Government of England</i> , Vol. II, Chap. LIX-LXII.                |
| Marriot, J.A.B.                       | : <i>Mechanism of the Modern State</i> , Vol. II, Chaps. XXXI-XXXIV.     |
| Robson, W.A.                          | : <i>Justice and Administrative Law.</i>                                 |
| Roche, John P., and Steadman, Murrays | : <i>The Dynamics of Democratic Government</i> , pp. 309-315.            |
| Sait, E.M.                            | : <i>Government and Politics of France</i> , Chaps. XI-XII.              |
| Sidgwick, H.                          | : <i>Elements of Politics</i> , Chap. XXIV.                              |
| Willoughby, W.F.                      | : <i>Government of Modern States</i> , Chap. XV.                         |

## The Party System

**Definition of a Political Party.** Political parties serve as the motive force in crystallizing public opinion, and as the unifying agency which makes democracy workable. They are the indispensable links between the people and the representative machinery of government. They are the vehicles through which individuals and groups work to secure political power and, if successful, to exercise that power. They make people politically conscious, that is, aware of their role as citizens. This role cannot be fulfilled simply by voting, but must be a continuous one if government is to be kept responsive to public interest. Thus, political parties are responsible for maintaining a continuous connection between the people and those who represent them either in the government or in the opposition.

By a political party, then, we mean an organized group of citizens who hold common views on public questions and acting as a political unit seek to obtain control of the government with a view to further the programme and the policy which they profess. (MacIver defines a political party "as an association organised in support of some principle or policy which by constitutional means it endeavours to make the determinant of government".<sup>1</sup> Leacock compares it with a joint-stock company to which each member contributes his share of political power.) Every political party is based upon two fundamental aspects of human nature. The first is, that men differ in their opinions, but, at the same time, they are gregarious by nature. If they are to live in society they must adjust their differences with others and agree on fundamentals of certain opinions. Secondly, they combine with persons holding similar views in order to put forward those views in an organised manner, and to support the principles or policy which they jointly favour and support. Five conditions are, accordingly, necessary to constitute a political party:

- (1) That there must be a certain measure of agreement on fundamental principles which can bind the people together as a political unit. They may differ on details, but there should be no difference of opinion on principles they stand for. If there is no agreement on fundamentals, they cannot co-

1. *The Modern State*, op. citd., p. 390.

2. *Op. citd.*, p. 311.

operate with one another and achieve their political ends; the desire to attain political power.

- (2) That the men and women holding similar views must be duly organised. Without proper organisation the people make just a disorganised crowd and it is impossible to carry out common principles on which they agree. It is their organisation into a cohesive body that enables them to acquire strength so as to act in concert.
- (3) That the men so banded and organized should formulate a clear and specific programme which they should place before the electorate to win their support and devise all possible means to maintain it. They can only succeed in their mission if all solidly stand for that programme and present a united front. Even the slightest deviation is sure to plague the party.
- (4) That a political party should seek to carry out its policy by constitutional means. It is the ballot box which should decide the fate of a political party and its claim to form the government. Any organisation that aims at the employment of unconstitutional methods, that is, to seize power by violence and suppress all other parties, is not a party in the sense we view a political party.
- (5) That all political parties must endeavour to promote national interests as distinguished from sectarian or communal interests. Burke defines a political party as 'a body of men united for promoting by their joint endeavours the national interests upon some particular principle in which they are all agreed.' When a political party directs its activities in furthering sectional interests and selfish ends, it degenerates into a faction. A faction is a loosely united group of men who unite to achieve sectional interests as opposed to national interests.

It will, thus, be clear that a political party without a well-knit organization is nothing. It has neither the means to present nor to promote its programme. It has no national appeal to make and no possibility to succeed in its political mission in winning elections and forming the government. The old conception that a political party is a group of men professing the same political doctrine is not the entire truth now. The emphasis has shifted from ideology to organization and this has been necessitated by the extension in the franchise and consequently the nationwide appeal a political party should have for its programme. Dr. Roucek has aptly said that a political party "is held together, primarily, by its ideology and organisation."<sup>3</sup>

**Importance of Political Parties.** Political parties are indispensable for the working of a democratic government. In fact, they supply the motive-power which keeps the wheels of administration moving. Without political parties, says MacIver, "there can be no unified statement of principle, no orderly evolution of policy, no regular resort to the constitu-

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3. Roucek Huszar and others, *Principles of Political Science*, p. 447.



tional device of parliamentary elections, nor of course any of the recognised institutions by means of which a party seeks to gain or to maintain power."<sup>4</sup> Those who deplore the existence and influence of political parties, perhaps, do not understand the working of the machinery of democracy. As Lowell says, "The conception of government by the whole people in any large nation is, of course, a chimera; for wherever the suffrage is wide, parties are certain to exist and the control must really be in the hands of the party that comprises a majority or a rough approximation to a majority of the people." Without party organisation there may be factions and cabals, people appealing and petitioning to government for the redress of personal and sectional grievances. Political parties seek to do more than influence or support the government; they seek to make it. Their primary business is to influence an electorate to support their programmes, to win election, and to form a government in order to pursue the programme endorsed by the electorate at the General Election. And for that matter political parties need to be continually operative if a democratic system is to work effectively.

Political parties, thus, perform necessary service; they are inevitable like the tides of the ocean. "Their essential functions," says Lowell, "and the true reason for their existence, is bringing public opinion to a focus and framing issues for a public verdict."<sup>5</sup> They are the instruments for carrying on popular government by concentrating public opinion. Their function is to make candidates and programmes known to the public and attract them to those programmes, so that they can speak with a united voice, instead of uttering an unintelligible babel of sound. If the millions went to the polls without any sort of thought and agreement, they would scatter their votes among so many candidates possessing and professing so many divergent views and policies, thus, creating chaos, pure and simple. Political parties make the scheme of representative government workable and in advance of the election help to bring together large numbers of men in acceptance of a common basis of action. The importance of political parties may be summed up in the words of Bryce. He says, "In popular governments, however, parties have a wider extension if not a more strenuous life, for everywhere a citizen has a vote, with the duty to use it at elections, each of the party which strive for mastery must try to bring the largest possible number of voters into the ranks, organise them locally, appeal to them by the spoken and printed word, bring them up to the polls. Ballots having replaced bullets in political life, every voter is supposed to belong to one of the partisan hosts to render more or less obedience to its leaders."<sup>6</sup>

**Party System an extra-legal growth.** An institution of such vital importance as the party system is an extra-legal growth in every democratic country. Though it exists outside the legal framework of the State and it is not referred to in the constitution of any country, it has become as indispensable as the law itself. The Constitution of the United States of America does not presume the existence of political parties. The makers of the constitution shared the common opinion that political

4. *The Modern State*, p. 396.

5. Lowell, A.L., *Public Opinion and Popular Government*, p. 70.

6. Bryce, J., *Modern Democracies*, Vol. I, p. 125.

parties were highly detrimental to national solidarity as they encouraged strife, division, chicanery, and personal manipulation. Yet, within a few years of the career of the Union party divisions and party spirit were sufficiently evident. In the Presidential election of 1796, there were two national parties, one supporting John Adams and the other supporting Thomas Jefferson. By 1800, the party system had settled itself quite firmly in the government, even to the extent of necessitating the addition of the Twelfth Amendment so as to make the electoral college method workable. Since then political parties have played a very vigorous role and today this extra-constitutional growth forms the hub of the political life of the nation. "But for the appearance of a national party system," as Professor Brogan realistically points out, "the election of a President really enough of a national figure to carry out his duties, might have been impossible. And it is certain that the greatest breakdown of the American constitutional system, the civil war, came only when the party system collapsed." Gilchrist is of the opinion that the "party system is really the method whereby the too great rigidity of the American Constitution has been broken down." What the framers of the Constitution had divided into three departments and put them asunder, the party has reunited.

It is, again, a curious fact that in Britain, where the party system first began, political parties are still unknown to law. But without the political parties the whole nature of the British Constitution would be changed and many of the conventions would become unworkable. His Majesty's Government is a party government and the Prime Minister is the leader of the majority party in the House of Commons. The party in Opposition is His Majesty's Opposition and it is recognised as a necessary and vital element in the working of the British Constitution. The functions of the Opposition are to criticise and to vote against the policy of the government, the party in office, with a view to overthrowing it and taking its place. One party to give place to another party. Jennings has, therefore, aptly said that "a realistic survey of the British Constitution today must begin and end with parties and discuss them at length in the middle".<sup>8</sup>

Even the government of the U.S.S.R. is a party government, although it is a misnomer to call it a party government in the original sense of the word. In Russia there is only one party and only one set of social and political ideas. So long as one general line is demanded, one ideology is prescribed, and one party alone is permitted to exist by the Constitution, the necessary conditions of a democratic State are necessarily absent. Democracy is a government by discussion and involves differences of opinion. Opposition is the hub of a democratic government and upon its strength depends the success or failure of democracy. Dictatorship does not tolerate differences of opinion on any issue big or small. Discipline, duty and sacrifice are its three cardinal principles. In dictatorship, therefore, there is no place for the Opposition and it cannot be permitted to exist as it may mean the demise of the dictatorship itself.

7. Brogan, D.W., *An Introduction to American Politics*, p. 45.

8. Jennings, W.I., *The British Constitution*, p. 31.

## THE ORIGIN OF PARTIES

**Origin of the Parties.** A genuine party system, that is, that (which contains two or more parties, is a major step in the attainment of political maturity. It is now a little more than a century that parties in the true sense of the word came into being. Before that there were "trends of opinion, popular clubs, philosophical societies, and parliamentary groups, but no real parties". Today, parties function in most of the countries of the world, and in others there is an attempt to imitate them.

Historically, therefore, the emergence of political parties has accompanied the growth of the modern electorate. Indeed, it was the latter that made the former. The more the right to vote became extended and multiplied the more it became necessary for party organisations, which previously had been based upon legislative cliques, to organise the electors in order to make the candidates known and to canalize the votes in their direction. Parties, thus, acquired their new character. They became mass organisations, linking together a large body of citizens with their representatives in the legislative assemblies. They developed institutions of their own and with a view to fight and win elections, they collected financial contributions. In this way the parties responded to the real need. Without them the millions of voters who composed the new electorate would have become a disorganised crowd unable to formulate their aims or debate the important and many issues they confronted. "By means of parties, the voters obtained a medium that, to state it in no stronger terms, afforded a chance of rational and coherent action."

*Basic 9 P.P*

**The Theory of Human Nature.** In 1882, W.S. Gilbert wrote:

"How nature does always contrive  
That every boy and every gal  
That's born into this world alive  
Is either a little liberal  
or else a little conservative."

One main explanation of party divisions is that it is based on human nature. According to this theory some people are instinctively conservative and want to leave things as they are; (others are instinctively progressive) and want to make changes. These inborn temperamental differences incline an individual towards one party or another. To these two natural or psychological party divisions are given the names of parties of the Left and Right. These names take their origin from the custom followed in the legislatures of European Continental Countries where the progressive members sit on the left of the President, and their opponents on the right—this custom dates as far back as the French National Assembly of 1789.

These innate temperamental differences are often modified by age as well as by circumstances. Advancing years are always accompanied by the cautious conservatism of age. (Conservatism is the product of mature intellectual judgment whereas youth is radical. Emotionalism and impulsiveness are regarded as the special attributes of youth. Young men



are, as a rule, radical in their thoughts and actions and aim at introducing drastic and revolutionary changes in the existing social order. There is, therefore, much truth in the saying of a King of Sweden: "A young man, my dear Minister, who has not been a Socialist before he is five and twenty shows that he has no heart. But if he continues to be one after five and twenty he shows that he has no head," the implication being that there is a tendency for political opinion to grow less progressive with age.

**Conflict of Economic Interests.** But the more realistic division into parties is the conflict of economic interests. Arthur Halcombe has correctly said that "national parties cannot be maintained by transitory impulses or temporary needs. They must be founded upon permanent sectional interests, above all upon those of an economic character."<sup>10</sup> Differences in possessions, economic outlook of the people and economic conditions are the vital forces behind the formation of political parties. Men of property are invariably inclined to caution, distrusting and dreading change because it threatens their economic security. Others, having no possessions, thrive upon the hope that change will improve their lot but is not likely to make it substantially worse. Conflict of economic interests is such an important factor in the division of parties that even Lord Macaulay so linked together diversities of temper and diversities of interest as if they were of the same order. Some people are repelled by the suggestion that human conduct is shaped by economic motives. There may be some force in their argument that politics is not all economics, but certainly without economics, "politics is an utter mystery".

**Environmental Effect.** It is often claimed that men inherit their politics and religion. Membership in a party, as in a church, is less a matter of man's conviction and decision. It is the pressure of his environments and particularly of the groups to which he belongs, the family group exerting a potent influence. The youngman joins a particular party, because his father belongs to it. "Party allegiance, like property, is often transmitted from generation to generation." In the vast majority of cases the son enters politics on the same side as his father. Sometimes, also, there may be settled political traditions in a wider group. This may combine with the influence of group interests, but it may be largely independent of that. In the United States, for instance, it used to be said that the people of Irish descent would traditionally incline to the Democrats and people of German descent to the Republicans. In Britain sometimes, though less than formerly, certain districts or regions have a traditional attachment to one party.

**Religious and Communal Sentiments.** Political parties may also be based on religious affinities. In the Western countries religious and communal passions are excluded from the conduct of government. But in India political parties were unfortunately divided by her past rulers on religious grounds in order to defeat the nationalist forces and to strengthen their hold on the country. Today, India is a secular State, yet communal parties like the Hindu Mahasabha, the Jan Sangh, the Akalis, and

10. *Political Parties of Today*, p. 41.

11. Chandrasekharan. C.Y., *Political Parties*, p. 93.

the Muslim League Party of India, still persist with their communal labels. Political parties with communal colouring are bound to militate against the development of national spirit and the successful working of Parliamentary government. In fact, for the building up of a national unity, the secularization of politics and the pursuit of a vigorous social and economic programme are absolutely necessary. "The wisest of leaders in all denominations," says Beard, "have deplored the introduction of religious disputes into political discussions and campaigns."<sup>12</sup>

**Four types of Parties.** We, thus, find men generally divided into four types of parties. First, there are men who move with the times and desire to bring about changes by gradual reform in the existing institutions. They are called **Liberals**. There are others who will continue with the old order and want to maintain **status quo**. They are called **Conservatives**. There are still others who will like to replace the present institutions by those which existed in the past. Past is a golden age to them and they advocate return to the methods, customs and institutions of the ancients. Such a class of peoples are called **Reactionaries**. Lastly, are the **Radicals**. They will not go slow, but advocate revolutionary changes even if such changes could be brought about by a revolution. They have no faith in the existing institutions, and will, accordingly, abolish or uproot them altogether and establish new ones in conformity to their ideals.

But this is really a simple analysis of the party division. A party is a synthesis of various interests. It is as much the result of mental traits of men as they are of the interests near to their heart, of the conditions and surroundings in which they live and of the social structure of which they are the members. Bryce beautifully sums up when he says that "though the professed reason for the existence of a party is the position of a particular set of doctrines, it has a concrete side as well as a set of abstract doctrines. It is abstract in so far as it represents the adhesion of many minds to the same opinions. It is concrete as consisting of a number of men who act together in respect of their holding or professing to hold such opinions."<sup>13</sup>

## FUNCTIONS OF POLITICAL PARTIES

The main functions of political parties are the selection of candidates for election; the planning and execution of the election campaign; the maintenance of party loyalty and party discipline; the formulation of long-term policies and short-term programmes, propaganda, research and political education of the electorate. Political parties assist in the formulation and expression of the general will by organising and winning elections. If there were no parties, politics would be a sheer babel of tongues. A disorganised mass of people can neither formulate principles nor agree on policy. A political party is an organised unit which enable men and women, who think alike, to support a definite programme and pursue it vigorously. It, therefore, brings order out of chaos by putting before a multitude of voters its programme and securing their

12. Beard, *op. cit.*, p. 55.

13. *Modern Democracies*, Vol. I, p. 126.

approval on vital issues of policy. It plans and contests elections and endeavours to win. For winning elections, it is necessary that a political party should have the sanction of a majority of voters. It needs educating the electorate and moulding public opinion. Every political party does it through its press, platform and other vehicles of propaganda at its disposal.

Political parties, thus, present their programmes and submit the representatives of those programmes to the choice of the electorate. In their programmes, political parties make simple of the social and economic problems which confront the people and their country. They also attempt the task of foresight by formulating long-term policies and short-term programmes. The electorate, no doubt, primarily selects men, but by doing so it actually selects a party's programme.

When a particular party gets a majority verdict of the electorate, it forms government and thereby gets an opportunity to translate its programme into reality or to carry out its programme in action. If the existing framework of law is deemed inadequate for the pursuit of the party programme, then, new law need be made. For the fulfilment of party programme and for making necessary laws thereto, party organisation provides for united action. It holds the representatives together subjecting them to the party whip and the party discipline. The legislature, indeed, cannot work smoothly without the party whip. The party solidarity, in short, is essential for carrying out a coherent policy which is so essential for good and efficient government. "It is the work of the parties to bind the disconnected organs into a unity and secure the harmonious co-operation of the entire government." A party, therefore, is a unifying agency between the executive and legislative departments of government.

Thus, the first role of the party is to sort the issues for the electorate. It puts before them its programme much in advance of elections and presents them with alternatives between which they may choose. Parties are alternatives and the programmes, which they put before the electorate, represent a selection made by each party out of the numerous possible issues of the moment. Dr. Finer rightly remarks: "Without parties an electorate would be either impotent or destructive by embarking on impossible policies that would only wreck the political machine".

The second role of the party is to supply the majorities without which governments cannot remain in power. If there were no parties, if members of Parliament were completely disorganised and formed only a mass of men voting one way today and another way tomorrow, the government could not tell how long it could stay in power. It would have no stability and no power to plan any coherent policy. In fact, it would be difficult to form a government under such chaotic conditions. Moreover, party provides alternative teams to run the government. It prevents the same people remaining in power too long and looking on office as a matter of right. A party system guarantees to the electorate that change in government can be effected if they wish it. It is always wholesome to know that no one is indispensable in politics and you can be replaced tomorrow. A party system always reminds the rulers that ultimate appeal rests with the people, and they must remember those to



whom they will have to account in the future as well as those who entrusted them with power. Under a representative government you hold your job on good behaviour only. Finally, where considerable separation and division of powers exist, as under the Presidential system of government, political parties serve as the necessary unifying agency. In the United States political parties have united what the Constitution had put asunder.

### THE ORGANISATION OF PARTIES

**Party Organisation.** If the primary function of the party is to consolidate public opinion in advance of the election, permanency and organisation are, then, the prerequisites of a party system. If the parties are not duly organised, they will remain vague, shapeless, mere tendencies to similar views but not units capable of doing their real work; controlling the government. But parties can only be organised if they are permanent. Short-lived parties are just transitory phases of political developments over passing issues or temporary problems. They are not parties, but groups without any unified programme and policy and without any definite influence on the electorate. And since the life of the groups is short and precarious, they rarely develop lasting traditions and loyalties. Nor do they dominate the government and instead become an instrument in the hand of a clever politician.

"An organised party is almost like a small State within a big one." It has its active membership and its passive adherents, its local branches or constituencies, with their branches of propaganda, fund collecting and recruiting, its election to the party council, responsible for its choice of leaders and officials, and the adoption of the party policy. "By degrees which to the ordinary citizen were imperceptible," says Dr. Finer, "these nation-wide fellowships have come into being and organised themselves with a gigantic and complex apparatus. They possess buildings and newspapers, printing presses and advertising experts, songs and slogans, heroes and martyrs, money and speakers, officials and prophets, feast days and fast days; like all religions they disrupt families and produce heretics, and among their agencies of discipline and subordination are the novitiate and penance."<sup>14</sup>

Party organisation, thus, operates incessantly and the permanence of organisation and activity differentiate the parties of the present from the parties of the three quarters of a century ago. Before the middle of the last century political parties were loosely organised and remained inactive before elections. They would mobilise their men and resources just before the election and demobilise after the polling day. Today, the parties operate throughout and all through, partly because victory in parliamentary elections is otherwise impossible, but also because in the modern State there are many local elective offices to fill. Local elections are the index of public opinion and they give a cue to the shape of things to come. The trends of opinion expressed at the local elections indicate the electoral support the party is likely to secure at the General Elections.

Every party must, therefore, keep itself abreast of the public opi-

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14. Finer, H., *The Theory and Practice of Modern Government*, p. 363.

nion. In fact, the local party branch plays a most important part in the party organisation. "The party branch," says Soltau, "is a local unit of the army, provides the recruits, and is also a centre of intelligence as to what is going on within the party and in the country in general." It is here that the citizen expresses his views freely and easily and makes his mark in the party policies. Local influence, which he exercises, paves a way for him to enter the arena of national politics. A local branch of the party is, in fact, a school of democracy and public life. It is also the nerve centre of information as to what is being thought and said of the party and its politics.

Political parties are organized along different lines in every State. Generally speaking, in European States all political parties have annual meetings of party leaders to decide policy and plan programme. The debates and discussions at such meetings are of immense value both to the leaders and the rank and file members in promoting and understanding of the issues and evaluating the competence of the top leadership in the party. Once the party policy and programme has been decided members at all levels of the party are required to strictly follow it. Any deviation therefrom may make the member subject to party discipline. In Britain party discipline is particularly strict.

The two major political parties in the United States are formally organized on a hierarchical basis with a national committee, a state committee, a county committee, and city, town, borough, village, parish and other committees. The control of this complex organization does not flow from the top to the bottom. The units at the local level are the most important. The county executive committee is also an extremely important part of the party structure. It has the deciding voice in matters of policy and of local patronage. The party members, it is significant to note, are not subject to any discipline. Nor is there any machinery to enforce it. The obligations of members are voluntary. The result is that the members of the Republican and Democratic parties in Congress do not hesitate to cross party lines to support legislation "more in keeping with either their own predilections or those of their narrow and localized constituencies". The American political system, therefore, makes little provision for the real and responsible leadership such as the Cabinet system requires.

*③ The p. s. is indispensable in modern democracies.*

### WEAKNESS AND STRENGTH OF THE PARTY SYSTEM

*The* **Merits of the Party System.** The advocates of party system emphasise that it is in accord with human nature and the innate qualities automatically divide the populace into parties. As a political contrivance, *③* party system makes democracy workable. It enables people scattered all over the country to agree upon some common principles and to work together in support of those principles. *③* In the absence of organised political parties there would be conflicting groups of opinion without anything common to harmonise them into an effective working mechanism. In fact, the success of a representative government largely depends on the energy, efficiency, and enterprise of the party system.)

"Without the party system," says MacIver, "the State has no elasti-

city, no true self-determination."<sup>15</sup> Irresponsive and irresponsible government is based upon force rather than on the will of the people. The only method of securing a change of government, under these circumstances, is **coup d'etat** or revolution. But a party government lives and thrives on public opinion. Force is replaced by appeal. It regards "persuasion more desirable than compulsion, and the conflict of ideas more creative than the clash of arms".<sup>16</sup> The party system ensures sober and healthy criticism of government both inside and outside the legislature. Since it is a government by criticism, Opposition acts as a check on hasty, ill-considered, and class legislation. The party in power is amenable to the opinions of the Opposition and it is always eager to accept its reasonable suggestions for the indispensable conditions of majority rule are forbearance, moderation and generosity. Both the majority and the Opposition accept the principle of "live and let live" in the knowledge that the system of representative democracy, more so the parliamentary government, allows to each in turn and in time its fair share of power.

"The party system was in particular the mechanism by which the class-state was transformed into the nation state." All States at one stage of their development were class-states. Their government was controlled by and in the interests of the dominant classes. "The decisive distinction is between the classes and the masses, the classes in this significance being generally two, the nobility and the clergy." The authority of the nobility rested upon the ownership of land, the leadership in war and the prestige of birth and station. The authority of the priesthood rested on the prestige of culture and spiritual dominance. Government under these conditions of class rule was not amenable to public opinion. The masses had nothing to do with the policy of the government. They led a life of suppression, frustration and desperation. But party-rule is the antithesis of class-rule. Party, in fact, begins as a protest against the vested interests and inviolable rights of the class in power. Party-rule "implies the alteration of power, a system of succession which gives each its opportunity". If the policy of the party in power is not approved by the people, it must necessarily give place to the party or parties in Opposition. Thus party system has furthered the ends of democratic government by organising and directing public opinion. Political parties "make articulate the inarticulate desires of the masses". They act, in the words of Lowell, as the brokers of ideas.

Furthermore, the party system promotes legislative excellence and makes elections easy by nominating candidates much in advance of the actual polling. It has two advantages. In the first place, the electorate comes to know the candidates and their labels. They, accordingly, get sufficient time to consider their comparative worth as representatives and evaluate the policy of their respective parties. Secondly, political parties help candidates to secure election through their collective strength. Party funds and party organisation help the election of poor, and also, able politicians who otherwise would have no chance of being elected. Political parties also bring harmony between the two wings of government, the Executive and the Legislative. Under the Parliamentary system of

15: *The Modern State*, op. citd., p. 399.

16. *Ibid.*



government the party commanding majority in the legislature forms the government and is answerable to it for all their public acts. In the oft-quoted words of Bagehot, Cabinet is a hyphen that joins, a buckle that binds the Executive and Legislative departments together. The Fathers of the American Constitution put asunder the Executive and Legislative departments by rigidly adhering to the doctrine of the Separation of Powers and consequently established the Presidential system of government. But the political parties now join what the Fathers had scattered.

⑦ Then <sup>by</sup> their election campaigns political parties arouse public spirit and influence the masses to take active interest in public affairs. In this way, they inculcate civic enthusiasm and help in the realization of the democratic spirit. That vigilance is the price of democracy. Political parties help the people to feel that they are the masters of their own destiny. They determine for themselves the kind of government they wish to have. Moreover, political parties gather up the whole nation into fellowships and "they lead", as Dr. Finer says, "in the sense of bringing to the individual citizen a vision of the whole nation, otherwise distant in history, territory and futurity". The party system, thus, broadens the horizon of voters and representatives alike by breaking sectional barriers and discounting local interests. The political parties are really nationalising agencies. They keep, as Bryce says, "the nation's mind active, as the rise and fall of the sweeping tides freshens the water of long ocean inlets." Finally, the party system involves discipline. "It not only brings order out of the chaos of a multitude of voters, it trains the members themselves in loyalty and consistency." Loyalty and allegiance are its watchwords, and obedience its rigid demand. Without this no party can exist and more so succeed in its political objective.

**Demerits of the Party System.** ① The critics of party system condemn it categorically and characterize it as the most unnatural political phenomenon. They maintain that party divisions are not the result of human nature and, as such, set up a peculiarly artificial agreement among the people who profess to have identical political views. Similarly, the disagreement with their opponents is equally artificial. "Each side," thus, "remains in a state of wilful inconvincibility, with individual judgment frozen tight in the shape of the party mould." This artificial agreement and disagreement divides the people into hostile groups at regular and perpetual strife with one another. Such a bitterness is highly detrimental for national solidarity and integrity of the State.)

A party, like a broker, it is asserted, "tries to stimulate a large amount of agreement than actually exists". Such a nature of political ties encourages hollowness and insincerity. The party system, therefore, demoralises politics and makes it sordid. It crushes the individuality of the party members and reduces them almost to the position of camp followers. ② No one can rise high in politics except through the regular channels of some party. An independent citizen, who does not tag himself to some party, is looked upon as a "crank" or a "goody-goody". But a party-member must bow to party dictates, otherwise the party discipline coerces him. Thus, by insisting on slavish obedience to party behest,

② gti's  
maintains  
that p. 5 +

independence and individuality are destroyed. This is contrary to the spirit of democracy)

It is further maintained that party system makes the political life of a country machine-like.<sup>18</sup> The Opposition party is always antagonistic to the party in power. Opposition is a party principle and it has nothing to do with utility or logic of the policy or an enactment. All laws proposed by government must be opposed tooth and nail, no matter how useful and urgent they may be for the country. It must censure the government on all matters of policy no matter what the question may be. This is not the way of government by discussion. There are three axioms which must be accepted and obeyed if government by discussion is to work successfully—the axiom of agreement to differ, the axiom of the rule of majority, and the axiom of compromise. In the din of the party politics and the hostility that is engendered these axioms of practical utility are forgotten. Another evil of the party system is that it gives an opportunity to self-seeking political adventurers to exploit the masses for their own personal interest. If there does not exist any political party, a political adventurer will endeavour to create one. Just as every cock likes to have his own dunghill to stand upon and crow, so does this political opportunist to ensure his berth for furthering his own selfish ends. The mushroom growth of such parties complicates the political problems of a country, India being a glaring example of the evil. Again, party government means "excessive pandering to the people. This results in popular legislation, not for the good of the country but to catch votes". The party system, therefore, debases public morals and gives rise to the 'spoils' system. There is a regular race in job hunting and patronage of the worst type. Merit is ignored and persons are heaped upon party members and their supporters. The tone of administration, under these circumstances, severely deteriorates and disaffection and dissatisfaction grips the whole community. It means total paralysis of the normal political life.

The party system, its opponents maintain, lowers the moral tone of society by preaching falsehood and suppressing truth. The methods employed to ensnare the voters and thereby capture their votes are sometimes obnoxious. The language used in the meetings of the party campaigns is very often scandalous. Parties try to impress on the electorate "the truth of their views and the falsity of those of others. In this way parties are often guilty of the sins of **suppressio veri and suggestio falsi**".<sup>19</sup> Perverted party propaganda chokes reason and strangulates thought. It helps flaring up of emotions. Swayed by emotions (and deprived of reasoning power, the masses blindly follow what they are told to do by their leaders. It is the triumph of demagoguism and emergence of this kind of herd psychology is the death of democracy. A citizen of democracy is not merely to obey, he has also to see if his obedience is rational.)

Again, it is said, that the party elects its leader and once he has been elected the party-men do not only obey him, but prostrate themselves before him. The party system, thus, is likely to pass into the

18. Gilchrist, *op. citd.*, p. 337.

19. Gilchrist, *op. citd.*, p. 338.

+ Similarly the party in power demands from its members regular and inflexible obedience.

at the time of elections

hands of caucuses or private cliques, "which arrange matters to suit themselves"). The (party system) it is further contended, keeps aloof many good citizens from public life. The nation thereby is deprived of the intellect, knowledge, and experience of the talented persons who are either election shy or refuse to be bound by the rigidity of the party whip and the party discipline. There is another aspect of it too. In a parliamentary system only the majority party forms the government and for that purpose talent is to be searched within the party itself. The water-tight party antagonism narrows choice and the majority party runs administration with men of inferior ability. Inefficiency of the ministers is the heaven for bureaucracy.

The party system narrows the vision of the people. Members of the party place the party before the nation. They behave as partisans rather than citizens working for the common good. Goldsmith wrote on Burke:

"who born for the universe narrowed his mind  
And to party gave up what was meant for mankind."

This is correct to a great extent. When party loyalty is carried too far and allegiance to the excess, claims of patriotism are obscured and the higher call of country is ignored. Such an attitude is disastrous especially in times of national emergency.

The party system also adversely affects local life. Local elections, too, are made the arena of party politics. Local considerations are, thus, brushed aside and candidates are nominated and elected on the basis of national issues and general party differences. Election campaign assumes the same pitch and intensity as the general elections and a scene of warring armies is presented. It is, finally, asserted that party system has created double governments. "The real governing power is without legal responsibility and is practically free from statutory and legal restrictions." Hence it makes a mockery of responsibility in a democratic government.

### Conclusion

**The Way Out.** Some of the defects of the party system, listed above, are real. The political history of every country, where party government has prevailed, is a record of party strife, factional spirit and sectional legislation. Party spoils are indiscriminately distributed among party men for personal services rather than for national patriotism. Though the extent of these defects may not be the same everywhere, yet there appears to be some truth in Alexander Pope's definition of party as "the madness of the many for the gain of the few." Rousseau declared that any community in which parties existed was incapable of a true common will. Even James Bryce was of the view that political parties encroached upon and undermined the democratic process. In the ideal democracy, he argued, each citizen is intelligent and impartial. The soundest arguments and best candidates will win out. But politicians discover that the citizen is neither informed nor interested —nor perhaps even intelligent. Hence the politicians endeavour to organize voters instead of persuade them. "Organization and discipline," warned Bryce, "mean the growth of a party spirit which is in itself irrational, impelling men to vote from considerations which have little to do with



a love of truth or a sense of justice." Similarly, Robert Michelo argued, in his study of the German Social Democratic Party, that party organization becomes an end in itself. Organization means oligarchy, that is the negation of democracy.

The emergence of one party systems after World War I, particularly those created in Germany, Italy and USSR, made a sharp change in the view that parties were destructive of democracy. It began to be universally viewed that parties were indispensable to the operation of democratic institutions. It was contended that democracy is bound up with the existence of at least two or more political parties. In their absence there would be no check on the egotism of the rulers. Duverger even maintained that "liberty and party coincide".

But there was another swing. In the last decade or so political parties have fallen once again in disrepute, especially in the "developing countries." Eminent and respected leaders of many countries in Asia and Africa have categorically denounced political parties and regard them as "worms upon the body politic". In many countries, as in Burma, South Korea, Pakistan and Egypt, the army seized the power professedly in order to rescue the State from the corrupting influences of the political parties and the moral degradation to which they reduced the citizens. In other countries, notably India, a non-party democracy is envisaged as the only means of improving public morality and making government really representative of the people's will. The party system in India is now in complete paralysis. When the statesmen and politicians defect from one party to another, not once but many times, and that too in a bid to get offices in the government, the plea for a partyless democracy has a profound appeal.

But partyless democracy is an impossible political expedient. It is, in fact, utopian to think of it. It is literally impossible to imagine how democracy could work in the absence of political parties. They are the most effective agency in educating the public and enabling the electorate to determine for themselves the rulers whom they would like to entrust the government for the time being. And, then, they are the main institutions through which the responsibility of the rulers is enforced. If political parties fail in performing this function, other institutions likewise vital to democracy will, *ipso facto*, fail. There are certain glaring defects, no doubt, in the party system, but they are not so serious as to necessitate the total abolition of parties. Abuses of party system can diminish only if improvements are made in the standards of public morality and sound public opinion is developed. A public opinion must fulfil two conditions. It should, in the first place, be an opinion which is widely held, and secondly, it should be of a public nature. Loyalty to the nation should precede loyalty to the party. Parties organized on the basis of race, region or religion should not have find place in the body politic. They promote sectional interests and parochialism. Sectarian loyalties debase public life and corrupt political morals.

For the purification of the party system, it is essential that there should be more active participation of upright and public-spirited citizens in party politics. It can only be possible when party control is diffused

and members at all levels are sure that they have a say in the working of the party and the determination of its policy. All party-members must feel that they are integral parts of the organization to which they belong and not merely its show-boys. Their voice counts as much as that of any other member and they have the opportunity to assert themselves. Such a democratization of the party structure and its working obviates the emergence of a small clique of party bosses or a powerful person who dominates the party and concentrates all power unto himself. If democracy needs political parties, political parties need a democratic spirit and democratic processes. Without them, it is dictatorship with all the evils inherent therein.

The right type of political education of the masses and the presence of an impartial and free press greatly contribute in mitigating the evils of the party system. An unattached and fearless press helps to increase the general level of education and intelligence of the citizens by presenting to them untwisted facts and honest comments. Two important factors help the growth of such conditions. In the first place, it involves the education of the masses and the reorientation in the prevalent system of education. The object of education should be to produce rational human beings dedicated to a common cause. Here comes in the second involvement and it is the right type of leadership. A leader should inspire the people by his dynamic personality, virtuous qualities and devotion. He should enlighten public opinion by his selflessness and dispassionate views on all problems and lead the various opinion forming groups and their instruments. It is only then that politics can be moralised. The future of democracy, therefore, depends upon the ability, character and devotion which education can instil in the people and the capacity of the leaders to lead them.

Sidgwick has suggested certain practical remedies for removing or mitigating the disadvantages of the party system.<sup>20</sup> He says that all these remedies are partly political and partly moral, the former naturally varying according to the form of government. He suggests, in the first place, that the influence of the party on government will be greatly reduced if under a Presidential form of government the President is elected by the legislature and the subordinate executive officers hold office independently of party ties. Secondly, in a parliamentary executive certain matters of legislation and administration may be withdrawn from the control of the party system. For example, the preparation of legislation may be entrusted to parliamentary committees other than the cabinet; certain heads of departments, who possess trained skill and specialized knowledge, should not retire with cabinet, and if necessary they may even be appointed from outside the party. Thirdly, a custom may be established that Ministers need not resign from office, because the legislative measures proposed by them have been defeated. They should resign only when a formal vote of want of confidence is carried against them in the representative chamber of the legislature. Finally, the process of referendum, even to a limited extent, will at any rate reduce the dangers of the party system. But all these changes essentially entail re-

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20. *The Elements of Politics*, pp. 600-603.

vision of the principles governing the functioning of parliamentary system of government and the factors governing the solidarity of the cabinet. They do not aim to purify and ennoble politics.

### THE TWO-PARTY vs. MULTIPLE-PARTY SYSTEM

**Two Party System.** In a State there may be two or more political parties. When the parties are only two in number, it is called a dual or two-party system. When there are more than two parties, it is known as the multiple-party system. The two-party system prevails in Britain, the United States, Canada, Australia, New Zealand and South Africa. The multiple-party system is obtainable in the Continental Europe and India. Most of the traditional two-party systems also include one or more smaller parties, as Britain, for example, includes the Liberal Party; Canada, the New Democratic Party and the Social Credit Party; South Africa, the Liberal, and since 1959, the Progressive Party. But the essential contest is between two parties only. The third, or the third and fourth parties, may secure a limited number of seats, but not enough to become the official Opposition. In 1906, the Liberal Party had 376 seats in the House of Commons. In 1943, it had 20 seats and in 1951 only six. In 1955, they retained the same number. In the elections held in October 1964, it increased to nine and it retains the same number now. Thus, the actual contest takes on the characteristic of two major forces, the Conservatives and the Labour, and the voter may cast his vote for a political party which is certain either to form the Government or to become its relentless critic. The British Constitution has grown and evolved under the two-party system and its working tends to maintain and perpetuate it. Consequently, the party system as worked in Britain and in those countries that have borrowed parliamentary government from Britain implies, strictly speaking, the existence of two parties only.<sup>21</sup>

The essence of party government, as practised in Britain and other countries with two-party system, is that the party enjoying majority in the Lower Chamber forms the Government and its leader becomes the Prime Minister. The Ministers are responsible to Parliament and they remain in office so long as they retain the confidence of the Lower House. On losing its confidence, they are obliged, by a constitutional usage, to resign. One of the two things may happen then. Either the Opposition party assumes office, if it can command a majority in the Lower House, or, more commonly, the Prime Minister may ask for dissolution of Parliament, when a general election takes place and verdict of the electorate is obtained. The party returned in majority in the Lower House, then, forms the Government.

**Multiple-Party System.** (In most countries of the Continental Europe, notably in France, there are multiple parties, sometimes numbering from 17 to 20 and even 30. India, too, is a close second to France. The multiple-party system is really intriguing. Where there are numerous parties it is a misnomer to call them "parties". They are, as a matter of fact, political "groups".)

21. Row, *op. cit.*, p. 46.



(But the difference is not of name alone. There are fundamental differences in the working of a two-party and multiple-party system. When there are a number of groups, say as many as nineteen or twenty, there can be no well-defined single majority party able to form a stable government. Majority can be obtained only by combination of groups called a *bloc*. An outstanding leader is selected from the various party groups and he sets about to make the ministry. The prospective Prime Minister negotiates with such leaders of other groups as can gather working majority. This is a matter of bargaining and compromise. Every ministry under the multiple-party system is, thus, a coalition ministry. A ministry which is the result of compromise between heterogeneous groups is sure to break down at the slightest pretext.) Nor are the ministers subject to parliamentary loyalty and discipline. There is no common party leader who can bind them together into a team to play the game of politics under his captaincy. Every minister is a prospective Prime Minister. (Cabinets formed by this method are notoriously weak and unstable. M. Briand remarked on one occasion that the day on which a French Prime Minister takes office is the day upon which one at least of his colleagues begins to prepare his downfall.)

**Arguments in favour of the Two-Party System.** The chief merit of the two-party system is that it ensures more permanent and stable cabinets than those formed under the multiple-party system. All ministers are taken from one single party which is returned to the legislature in majority. The political homogeneity makes them a well-organised and a responsible team of workers who play the game of politics with singleness of purpose under the captaincy of their accredited leader, whose undisputed authority they all accept. (They rise and fall in unison and are individually and collectively responsible for the policy which the cabinet initiates and they carry out. Their strength is like that of an iron rod.) Practically, every ministry (under a multiple-party system, is a coalition ministry, a combination of heterogeneous political elements with nothing common in them by way of principle.) *This arrangement is temporary.* The leaders of different groups simply compromise to come to a working agreement. Such a ministry is uncertain of its existence from day to day. They continue to work together so long as they can be made to agree. (Their strength is like that of an iron chain with many links. As soon as one link loosens the whole chain disintegrates. Similarly, when one combining group falls out, the government falls. In France, for example, between 1870 and 1934, there was a total of 88 Ministries, with an average life of less than nine months. During the same period Great Britain had 18 Ministries, lasting an average of three and a half years.) The natural result is that "government in France is little more than a succession of starts and stops, of rapid, sudden and bewildering shifts of policy with no end of confusion and waste". (When the life of government is short and precarious, long-term planning of policy cannot be attempted. It can only be attempted by a Government which is certain of a reasonably long period of office, and this is possible only under a two-party system.)

22. Laski, *Democracy is Crisis*, p. 96.

23. Ogg, *op. cit.*, v. 470

③ Dual-party system secures a representative government in the real sense. It provides the only method by which the electors, at the time of election, directly choose the government. Both the parties have their well-defined programmes and a direct appeal is made to the electorate on that basis. The electors choose between the programmes and decide about the party which is to come in power. Two parties, thus, bring the electorate to a point where they are faced by a simple alternative. One of the two parties will win a majority and become responsible for the enactment of policies; the other will be the Opposition; both homogeneous with their clearly defined policies. The multiple groups have no party organisation. Sometimes they have no organisation outside the legislature and, they have no programme to lay before the electors. The electors vote for personalities and not for programmes. They do not even know who will form the government. Government formed from a single majority party is really a government by consent and criticism. It is the consent of the people which returns the majority enabling it to form the government. The two-party system makes the Opposition most orderly and responsible in its relations to the government. The criticism of the government is more sober than it is under the group system. The leaders of both the parties are accommodating and they try to adjust on crucial issues. One of the writers has said that the Prime Minister in England knows the leader of the Opposition better than his wife. (It is an organised Opposition whose function is to criticize and vote against the ministerial party with a view to ousting it from office. When there are many groups there is no organised Opposition.) It is all a question of manipulation; even members of the cabinet are actuated by various more or less opportunistic motives. "Even if they were personally minded to hang firmly together, the groups behind them are full of dissentients who make dependable support impossible, and indeed may shift position or even dissolve completely almost overnight."<sup>24</sup> Laski, while summing up the advantages of the two-party system, says, "It is the only method by which the people can at the electoral period directly choose its government. It enables the government to drive its policy to the statute book. It makes known and intelligible the results of its failure. It brings an alternative government into immediate being."<sup>25</sup>

*According to* Arguments in favour of the Multiple-Party system. The two-party system has, however, recently come in for serious criticism. The late Professor Ramsay Muir, for instance, denounced it in his works in unmeasured terms.<sup>26</sup> He says that the two-party system has been the cause of the gravest defects in the British system of government. Bi-party system, according to Ramsay Muir, has destroyed the prestige of the legislature and has given rise to the dictatorship of the cabinet. The dictatorship of the cabinet is really the dictatorship of the majority and so long as a government has real majority, it can be reasonably certain of maintaining itself in power for the full life of Parliament. This almost mechanical source of power enables government not only to propose, but to dispose whatever they wish to dispose. It might even vio-

24. *Ibid.*, p. 469.

25. Laski, *Grammar of Politics*, p. 314.

26. Muir, *How Britain is Governed: The Future for Democracy*.

late the solemn pledges which it made at the time of general elections. 3 True democracy, it is maintained, consists in free expression of opinion and every kind of opinion should get due representation. Under a two-party system the choice of the electors is reduced to a simple acceptance or rejection of the whole political programme of one of the parties. There is no other alternative. The modern State, it is contended, is a complex structure with diversity of economic interests. It is, accordingly, essential that all these interests should be duly represented. By dividing the political life of the country into two parties, we deny representation to many interests. (A multiple-party system provides greater elasticity and mobility and gives an opportunity to various opinion groups to organise themselves.) "It does not divide the nation into irreconcilable groups. People can associate and organise without a serious compromise on principles." The two-party system, its critics further assert, "substitutes blind devotion for intelligent appreciation and choice in both the followers and leaders." It creates strong vested interests and party prejudices. Extreme rigidity and discipline discount free expression of opinion and encourage spoils system. *This is not possible under a multiple party system*

*is denied.* **Conclusion.** Whatever be the merits of multiple-party system and howsoever it may reflect more accurately the way in which the popular mind is actually divided, it is impracticable as an operative ideal. The essential need in administration is the absence of uncertainty. An executive must be able to plan its way continuously to an ordered scheme of policy. This involves a stable majority in order to have a strong government. "A legislature, otherwise, is so much the master of the executive that the latter is unable to attempt great measures, and the time which should be spent upon them is devoted to manoeuvring for positions which are lost almost as soon as they are occupied." Under a multiple-party system there is trading of votes and sacrificing of principles in a bid to form the government. And yet no one knows from one day to another how much longer the government will be able to carry on. Professor Sait, thus, poses a question: "Who can be held responsible for the numerous and secret shifts or for the achievement and derelictions of the chamber throughout the session?" His answer is, "Such being the case, the practical convenience of two parties must be preferred to the logical appropriateness of many." (Dr. Finer, in his own characteristic way, concludes that the two parties, "are better for the happiness and duty of nations than many parties, and two parties contesting seats everywhere. For then lies and error may be in all places challenged, while destruction of will and disintegration of outlook are reduced.") *means*

In spite of these obvious advantages of the two-party system, the existence of the two-party system or the multiple party system is not really something on which a deliberate decision can be made by the people of any State. A country does not weigh consciously advantages and disadvantages in order to choose one system over the other. Political parties are extraordinarily complex social institutions whose character

27. Laski, H., *A Grammar of Politics*, pp. 314-15.

28. *Political Institutions*, A Preface, p. 520.

29. Finer, H., *Theory and Practice of Modern Government*, p. 360.



inevitably is determined by the historical traditions of the society in which they grow. There are five large parties in Finland, Norway, and Denmark and four in Sweden and Iceland, yet all Scandinavian countries are noted for the dynamism and relative stability of their governments. The question, therefore, whether two parties or many parties are more compatible with the success of democratic government assumes an academic interest. Nevertheless the question is a real one in so far as it relates to tendencies to greater or lesser party divisions, rather than to change-over from one major type of party-system to another. The basic problem, then, involved is the weighing of the merits of simple against complex divisions.

### SINGLE-PARTY SYSTEM

What a Single-Party system means? Dictatorships also find the political party an indispensable instrument, but they use it in a very different way. Parties are the necessary means of democracy. But in dictatorships they become the end. This happens when electorate, parliaments and cabinets are all, in their different ways, subordinated to the exigencies and brought under the control of the party. In the same way and by the same process the party which is a part may become the whole by the exclusion of other parties. It may happen in two ways. First, both in Germany and Italy the Nazi and Fascist parties were given by law a special status regarding their property and the dignity and the physical safety of their membership. Simultaneous to the promulgation of this law there was sweeping liquidation and prohibition of other parties. And Mussolini could write in 1932 for the *Italian Encyclopaedia*, "A party which entirely governs a nation is a fact entirely new to history, there are no possible references or parallels."

But Mussolini did not state the truth. He owed a debt to Lenin and Stalin for establishing a single-party system government in Soviet Russia long before Mussolini could claim that in Italy. The Communist government did not liquidate the political parties as a consequence of the positive law. Before assuming *de facto* control of government all opponents of the Communist Party leadership had been forcefully liquidated. In Soviet Russia "anti-national" associations are not permitted and since political parties are associations, the domination of the Communist Party is assured. The Preamble of the Party charter, as amended by the Eighteenth Congress in March 1939, *inter alia* reads, "...The Party is the leading nucleus of all organisation of toilers, both social and State, and ensures the successful construction of Communist Society." Article 126 of the Soviet Constitution provides that "the most active and politically conscious citizens in the rank of the working class and other sections of the working people unite in the Communist Party of the Soviet Union, which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organisations of the working people, both public and State". The Communist Party is also the only political organisation listed in Article 141 as having the right to participate in Soviet elections. Both these constitutional provisions give the Communist Party a ruling position in the Soviet Government, and positive leadership in all other organisations.<sup>30</sup>

30. Refer to Anand Chandra Kapur's *Government of the U.S.S.R.* pp. 98-99.

A single-party, thus, has become a whole, and has assumed what is nowadays called a 'total' or 'totalitarian' character. (It is in its nature a supersession of parliament and the general system of parliamentary democracy. It does not expressly abolish parliamentary institutions, it simply makes them functionless.) (Both Hitler and Mussolini) were in the beginning champions of popular sovereignty and advocated for freedom of speech and expression, and rigid limitations of the powers of the executive. But both denied to their people on coming to power the right to rule themselves through democratic institutions and (suppressed ruthlessly every manifestation of anti-Fascist or anti-Nazi thought or action) and exalted the executive authority. (On one pretext or the other all the parties were liquidated and public opinion regimented. "The political parties," proudly declared Hitler on July 9, 1933, "have now been finally abolished. This is an historical event of which the importance and far-reaching effects have in many cases not yet been realized by all. We must now get rid of the last remains of democracy, especially of the method of voting and of the decision by majority.... The (National Socialist) Party has now become the State." In November election of the same year an unopposed Nazi list of candidates for the Reichstag was put before the country and all were duly elected. The climax was reached when one month later "the new all Nazi Reichstag held a seven-and-one-half-minute session and for the sole purpose of electing officers. 659 Brown Shirts rose and sat down in unison when the government's list was put to vote, and then went obediently about their own business." (In Russia) the Communist Party is a united fighting organisation "bound by conscious iron proletarian discipline." It is strong through its unity, "its singleness of will and a singleness of action incompatible with deviation from the programme, with breach of party discipline, or with the formation of factions inside the Party." There cannot be any conflict of authority or opinion between (the Communist Party and the government) because both (are indissolubly joined by reason of their membership especially at the higher levels.) One may go a step further and say that (so rigid is the control of the Party over the administration that all higher officials and the astounding majority of lower officials in the government are at the same time disciplined members of the Party. The Party, therefore, is the ultimate source of power. All important decisions on governmental policy are made at Party Conventions, Committees and Bureaus, especially the Presidium of the Central Committee. The government only ratifies and Government officials, as loyal and disciplined members of the Party, religiously carry them out.)

(A single-party government is, therefore, totalitarian. All the authority of government is concentrated in a single integrated political party. It even absorbs the State instead of merely acting on its behalf.) The only redeeming feature of one-party dictatorships is that they have a democracy flavour about them and by adopting some democratic forms had taken up some of the ideas and programmes which had grown up under democratic auspices. But (any single authority is by its nature total. It has no other authority at its side with which it must divide the exercise of power. The authority of a single-party government embraces

all aspects of human life and every form and phase of the activity of community's life) (The Fascists did so in the name of national unity and the Communists do it in the name of social unity) The African countries, with their newly won independence do so in the name of national unity. Whatever name may be given to it, single-party government is autocracy pure and simple and it is the autocracy of the leader of the party who is also the head of the government.

**Single vs. Plural-party system.** There is nothing in common between a single-party system and a plural-party system except the name. In democracies the party is a very different thing from the one in a totalitarian State. In the former, the distinction between society and the State remains, though "they are kept in connection and interaction". In the latter, the distinction between the two is blurred or confused by the party, which controls them both alike.

In democracies there is a distinction within the State, and the different organs of government are allotted their own spheres of jurisdiction and powers. Democratic parties are extra-constitutional growth and they are informal and non-governmental organizations. The political party in a dictatorship is the body of the faithful dedicated to the maintaining of one truth which its leader avows. It permeates every governmental as well as non-governmental activity and is virtually a part of the administration it dominates. Then, in democracies there "is compensation and balance" between the party in power and the Opposition party. In a totalitarian State there is no distinction in any of the forms. Opposition is not permitted to exist and it is only one party that rules supreme. In democracies toleration, discussion and compromise are involved by the presence of plurality of associations and consequently with many currents of opinion. (In a totalitarian State there is) a compulsory uniform society, (regimentation of opinion, and the electorate is simply an instrument of opinion)

One of the great advantages of the party system, as we know it from the democratic point of view, is that it always provides a possible alternative government and gives the electorate a choice between them. Under the one-party system there is no alternative government and no genuine choice before the electors, so that the influence of the people on political decisions is reduced to minimum.

Democratic parties are open to all whereas parties in dictatorship are closed to all except the selected) The Communist party of Russia probably has no more than five million members and the Fascist Party had something like three million members. The Nazi Party, too, had nearly three million members. The membership is intentionally restricted and with various objects, the foremost being to maintain the militancy of the organisation. With excessive numbers, there arises a chance of internal dissent. "Also, closeness of organisation, discipline, a feeling of community are attained with smaller numbers." At the same time it is desired to maintain a sense, both in the public at large and among the members of the organisation itself, that the members of the party are an elite, selected for their superior quality as compared with the rest of the population. It also means that admission to the party



is a privilege and a reward and the members owe a debt of gratitude to the leaders who have been so gracious to permit their membership. Finally, (it implies that membership of the party demands proper performance of duties and sacrifice in the task of government and leadership.)

(This brings into prominence the principle of leadership.) So much importance is assigned to the factor of leadership in the constitution of the party and thereby in the constitution of the State that the leader becomes the repository of faith. (Which) For Nazism, The National Socialist Party was Hitler and Hitler was the Party. The party organisation book contained the oath of loyalty to the Fuehrer, which ran: "I pledge allegiance to my Fuehrer, Adolph Hitler; I promise at all times to respect and obey him and the leaders who he appoints over me." "Believe, obey and fight" was the motto prescribed by Mussolini for his countrymen. "In the name of God and of Italy I swear that I will obey the order of the Leader without questioning." This was part of the oath taken upon admission to the Fascist Party. (Obedience to the leader was, therefore, deemed a religious duty) both in Italy and Germany and it was rigidly enforced by the arts of discipline and propaganda. Stalin was the Lenin of his own time. During his life-time Stalin was elevated to a superman possessing supernatural characteristics. "Such a man," said Khrushchev in his speech at the Twentieth Congress, "supposedly knows everything, sees everything, thinks for everyone, can do everything, is infallible in behaviour". He further added, "Such a belief about a man, and specifically about Stalin was cultivated among us for many years." And what did Stalin do? Khrushchev gave the answer. He said, "We have to consider seriously and analyse correctly this matter in order that we may preclude any possibility of a repetition in any form whatever of what took place during the life of Stalin, who absolutely did not tolerate collegiality in leadership and in work, and who practised brutal violence, not only towards everything which opposed him, but also towards that which seemed to his capricious and despotic character, contrary to his concepts." Khrushchev himself became Stalin and met the same fate at the hands of the new leadership.

Finally, (the leader of the Party is the head of the government, and the head of the government dominates every power and every sphere of the action of the State.) Throughout Mussolini's autobiography are his assertions of "my command", "my guidance", "my sense of balance and judgment", "my irresistible domination". Il Duce spoke the first and the last word for party and government. "Dictatorial parties are not parties," concludes (Dr. Finer, "but doctrinal despotism; they do not spread and encourage leadership but monopolise it.") Democracies anticipate an alteration of leaders and provide the public with a choice of candidates for office. Where democracies use the fervour and slogans of an electoral campaign to publicize the differences between programmes of the parties, the party in a dictatorship carries on continual propaganda campaigns in support of the government's objectives and is the chief means by which conformity is maintained throughout the society.

## SUGGESTED READINGS

- Barker, E. : *Reflections on Government*, Chap. X.  
 Brown, B.E. : *New Directions in Comparative Politics*, Chap. II.  
 Chandrasekharan, C.V. : *Political Parties*.  
 Duverger, M. : *Political Parties*.  
 Field, G.C. : *Political Theory*, Chap. XI.  
 Finer, H. : *Theory and Practice of Modern Government*, Chaps. XIV, XV, XVI.  
 Gilchrist, R.N. : *Principles of Political Science*, Chap. XV.  
 Holcombe, A.N. : *Political Parties of Today*.  
                               : *The New Party Politics*.  
 Kapur, A.C. : *Government of the U.S.S.R.*, Chap. XII.  
 Key, V.O., Jr. : *Politics, Parties and Pressure Groups*.  
 Leacock, S. : *Elements of Political Science*, Chap. VIII.  
 Lowell, A.L. : *Government and Parties in Continental Europe*, Vol. I, Chaps. XXIX-XXV, Vol. II, Chaps. XXXI-XXXVII.  
 MacIver, R.M. : *The Modern State*, Chap. XIII.  
 Maine, H. : *Popular Government*.  
 Munro, W.B. : *Personality in Politics*.  
 Michels, Robert : *Political Parties*.  
 NeuMann, S. (ed.) : *Modern Political Parties: Approaches to Comparative Politics*.  
 Ostrogorski, M. : *Democracy and the Party System*.  
 Ray, P.O. : *Introduction to Political Parties and Practical Politics*.  
 Rossiter, Clinton : *Parties and Politics in America*.  
 Sait, E.M. : *American Parties and Elections*.  
 Sait, E.M. : *Political Institutions—A Preface*, Chap. XXI.  
 Schapiro, Leonard : *The Communist Party of Soviet Russia*.  
 Schattschneider, E.E. : *Party Government*.  
 Sidgwick, H. : *Elements of Politics*, Chap. XXIX.  
 Truman, David : *The Government Process*.  
 Wilson, F.G. : *The Elements of Modern Politics*, Chap. XIII.  
 Wilson, F.G. : "Independent Voting," *Encyclopaedia of Social Sciences*, Vol. VII.

## Local Government

In the Chapters immediately preceding, we have considered the problem of distribution of governmental powers territorially from the standpoint of the manner in which these powers may be distributed as between the Central Government and the various political units into which all countries of considerable size are divided. And we brought out in that consideration two distinct types of government, the unitary and the federal. In the former, the territorial units generally called provinces, are created, their powers defined and their form of organisation determined by the Central Government. They remain, for all intents and purposes, the integral parts of that government. In a federation, the constituent units enjoy a juridical status and corporate personality. Their powers are the grant of the constitution which can neither be altered nor amended by the Central Government. It needs amendment of the constitution if any change is desired to be made thereto and all this means equality of status between the two sets of government, the one is not simply the creation of the other.

The major territorial divisions of both unitary and federal governments are further divided into smaller areas. But the problem here, too, is whether the smaller territorial areas should be governed from the seats of government of the major territorial divisions or they should be entrusted with certain specific powers which they may exercise locally. The answer to this question constitutes what is known as the problem of local government.

**Need for Decentralisation.** The government of the provinces of a unitary State and the constituent states of a federation within their jurisdictions are unitary. This is an important point. The work of the government is concentrated in the "capital" or the "seat" of government and all important decisions of policy are taken at this place. It is here that the legislature meets and laws are passed, High Court decides all points in the interpretation of laws, and rules and regulations are framed by the superior officials in the executive departments. The whole governmental life of the province or the state, in brief, is centralised at one place. The position is similar to one which necessitates the territorial division of the country into major political divisions and distribution of governmental powers between the Central Government and the provincial or State Governments. Such are the amount and variety of work to be done that it is impossible for a single authority directly to undertake the



performance of all those duties adequately, effectively and efficiently. In fact, the provincial government has neither the time nor the requisite knowledge of all the diverse problems which are peculiar to different areas. "We cannot realise the full benefit of democratic government," says Laski, "unless we begin by the admission that all problems are not central problems, and that the results of problems in their incidence require decision at the place, and by the persons, where and by whom the incidence is most deeply felt." This constitutes the real problem of local government and from this problem emerges the need for decentralisation. Decentralisation means distribution of governmental powers and responsibilities between the Centre and the local areas in which the country, if it is small in size like Britain, or the provinces of a big unitary State, or the states of a federation, are divided for administrative convenience. The provincial or State government is the Central Government for all local areas within its jurisdiction. Decentralisation is, thus, a centrifugal movement which aims to entrust local organs created in local areas with powers local in character, the presumption being that people belonging to the locality can know best and appreciate their own problems and needs and can solve them best. The entire problem of local government is, therefore, the problem of personal touch with the affairs concerning the locality and their solution. If the local people are denied association with local life, they would not only stultify their talent, energy, initiative and enterprise, but they lose all sense of responsibility.

**Meaning of Local Government.** Local Government, therefore, refers to the operations of corporations, municipalities, district boards, panchayats and other bodies which are entrusted with the execution of functions relating to and concerning the residents of a given area or locality. These functions do not concern the community as a whole, but embrace only a portion of the total population and territorial area of the State. The essence of all such functions is that they are purely local in character and need local solution in deference to the requirements of the people inhabiting that locality. The extent of the territory covered and the number of persons ruled over do not make any difference in the nature of local government. The Corporation of Calcutta or Bombay exercises its authority over a vastly greater number of people and considerably more extensive area than the Municipal Committee of Patiala or Kapurthala. And yet both are the units of local government performing more or less identical functions and possessing the same constitutional positions.

Sidgwick says that the term local government in a unitary State means organs, which though completely subordinate to the central legislature,<sup>1</sup> are independent of the central executive in appointment and to some extent in their decisions, and exercise a partially independent control over certain parts of public finance. As regards the constitutional relationship between Central Government and local government, the latter derives its powers from the former and is subordinate to the authority that creates it. But though a subordinate body, yet it has certain independence of action within the sphere assigned to it. It can make

1. *A Grammar of Politics*, p. 411.

2. Sidgwick had the example of Britain in his mind.

its own rules and regulations, or by-laws, to perform its functions and to control its finances.<sup>3</sup>

This brings into prominence the question of functions of the local bodies. According to MacIver the State seeks to fulfil three types of functions. In the first place, there are some functions which concern and effect the whole community and are of national importance. All such functions must belong to the national or Central Government. There are other functions which are of a universal character, but which for their efficient fulfilment, or on other grounds may be assigned to the provincial governments. Lastly, there are functions which are of peculiar concern of the locality, for example, water supply sanitation, maintenance of hospitals and libraries, running of public utility services, like supply of electric energy, tramway or omnibus transport. These services have reference to the local needs and it seems reasonable that the locality should have direct and fairly complete control over them. The efficient performance of all these functions requires local experience and knowledge of local details. As Laski put it, "Local Self-Government offers the best opportunity to the people to bring local knowledge, interest and enthusiasm to bear on the solution of their own local problems."

It is not, however, possible to rigidly separate the functions of local bodies. "Local interests," as MacIver says, "merge into national interests in variant degrees,"<sup>4</sup> particularly with the emergence of the Welfare State there are hardly any matters of local concern that are not matters of national concern. Subjects like education and health, for example, are local in character and require local solution, but they are really of national importance and the Central Government cannot remain unconcerned about them. The control of local government over subjects which vitally concern the locality can never be absolute in this era of conscious, consistent and sustained process of economic and social planning. The problem of local government is, therefore, not to draw sharp lines between the functions of Central and Local Governments. The real problem, as MacIver says, "is to assure at once the reality and responsibility of local government."<sup>5</sup> So long as the local body does not exceed its powers or is not found guilty of some flagrant piece of negligence the central government should not interfere in its performance. Professor Jenks rightly remarks that "so long as the local authority does its best and keeps within the law, however mistaken that may be, the central government has no right to interfere, even on the request of the persons suffering the consequences of the mistake."<sup>6</sup>

**Functions of Local Government.** The functions of local bodies, broadly speaking, fall under two heads: direct services to the public, and indirect functions. Under the latter the local bodies are required to conduct election of their members, to provide legal advice and action, to assess property for taxation, to plan, to control and audit local finances. The functions performed under the heading direct services are important

3. *Elements of Politics*, p. 511.

4. *The Modern State*, p. 393.

5. *Ibid.*

6. *English Local Government*, p. 15.

in the interests of public welfare and are sub-divided into three groups:—

(1) **Functions relating to the cultural developments.** In this category are included functions of providing instruction, control of environments by planning the town or the city, maintaining and supporting of art galleries, museums, zoos, libraries and other places of public recreation such as parks and gardens.

(2) **Social and Physical functions.** The local bodies look after sanitation, provide a proper system of sanitary drainage, conservancy arrangements and other conditions necessary for preserving public health. Closely connected with it is the provision for medical relief and other arrangements for checking the spread of diseases and epidemics. Then, come in services like construction, maintenance and repairs of roads, lighting of streets and thoroughfares, promotion of local safety against fire and other accidents and regulation of structures and traffic.

(3) Under the third category come functions of providing and regulating water supply, heat, light, public transport, collection and disposal of waste and regulation of food supplies through healthy markets.

Some major local bodies render certain public utility services such as provision of water supply, gas, electric light, bus or tram and local train services. There has been a remarkable expansion in the activities of local bodies in Britain and the United States of America. But the scope of these functions is somewhat limited in India. In the undertaking of ambitious civic schemes desired to inculcate aesthetic, cultural and economic activities, the Acts creating local bodies do not offer sufficient scope.

**Advantages of Local Government.** The institution of local government is at its best in countries which are governed on democratic lines. It is the experience of many countries that all matters of a local concern are ultimately best administered by a properly organised system of local government. Local government means the regulation and administration of local affairs by the people inhabiting the locality through representative bodies composed mainly of elected representatives. These local assemblies of citizens, says De Tocqueville, "constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty." Local bodies serve as a training ground in the art of self-government and the experience and knowledge acquired in local governance can best be utilised for the wider affairs of Central Government. Laski says that the institution of local government is educative in perhaps a higher degree than any other part of Government.<sup>7</sup> It cultivates a sense of civic duties and responsibilities and inculcates among citizens a corporate spirit of common administration of common interests. "Whoever learns to be public spirited, active and upright in the affairs of the village," says Bryce, "has learnt the first lesson of the duty incumbent on a citizen of a great country." Local institutions, again maintains Bryce, train men not only to work for others but also work effectively with

7. *A Grammar of Politics*, p. 411.



others. The citizens develop common sense, reasonableness, judgment and sociability, the qualities of moderation, accommodation and social dependence, which are so essential for the success of democracy.

When all problems of administration are not central problems the obvious inference is that those functions of government which affect mainly or solely the inhabitants of a limited portion of a country should be placed under the special control of this section of the community. Local knowledge brings about a closer adaptation of administrative activity, for there is a consciousness of common purposes and common needs. "Neighbourhood," says Laski, "makes us automatically aware of interests which impinge upon us more directly than upon others."<sup>8</sup> The Central Government is very often indifferent to these interests, and if it interests itself in them at all, its transactions are subject to red-tapism which unnecessarily delay the plans requiring immediate execution. Moreover, an administration which is not local is unresponsive to local opinion. It is, thus, "bound in the nature of things, to miss shades and expression of thought and sentiment the perception of which is in a real degree urgent to the success of administration."<sup>9</sup> The Central Government, in other words, cannot grasp the genius of the place. Being government from without, it fails to evoke either interest or responsibility from the people it seeks to control. "It may well evoke indignation, but it does not succeed in eliciting the creative support of citizens." It is a matter of common knowledge that what is done by our common counsel in the solution of our common problems gives us a degree of satisfaction which is unobtainable when it is done for us by others from outside.

Moreover, Central Government inevitably aims at uniformity and not variety. Local problems need variety, because they are peculiar to the needs of a particular area. Uniformity is usually cheaper, "because it is almost always easier to make a single solution and apply it wholesale than to make a variety of solutions and have them piecemeal."<sup>10</sup> But uniformity is only a mechanical solution of all our problems. Problems peculiar to a particular locality are not standardised in character. They must be individually solved with reference to the conditions which demand their solution.

Local Government aims at division of governmental functions and it lightens the burden of the Central Government. If the Central Government is overloaded with work, it becomes incompetent and it would do things tardily, expensively, and above all inefficiently. At the same time, centralisation means the presence and functioning of a strong bureaucracy. Bureaucracy may create and provide for conditions of an effective and efficient government, which is, no doubt, the nature of a good government. But a good government is no substitute for self-government. It is, accordingly, urged that unless local bodies are entrusted with active powers, "the central authority will not merely stifle all local initiative, but destroy also that well-spring of local knowledge and local interest without which it cannot possibly exercise its functions." Local Govern-

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8 *Ibid.*

9. *Ibid.*, p. 412.

10. *Ibid.*, p. 413.

ment, therefore, is necessary for efficiency and responsibility. Inaugurating the first Local Self-Government Ministers' Conference (India) in 1948, the Prime Minister, Jawaharlal Nehru, observed that "Local Self-Government is and must be the basis of any true system of democracy. We have got rather into the habit of thinking of democracy at the top and not so much below. Democracy at the top may not be a success unless you build on this foundation from below." It is only through local government that self-government becomes real. To put it in the words of Bryce, "the best school of democracy and the best guarantee for its success is the practice of self-government."

Again, economy is secured by local government. Local functions are performed by local authorities out of funds raised locally. Equity demands that services rendered exclusively or mainly to a limited population, who live within a certain district, should pay for them. The incidence of such services should not be shifted to others who have no gain therefrom. As the inhabitants of the district have to pay for the local services, it is natural for them to demand proper control over those services. It has three results. In the first place, participation in the work of local bodies tends to develop among the people a sense of mutual interest in their common affairs and trains them to work for others honestly and efficiently. Secondly, the people entrusted with the management of local affairs will manage them more efficiently in order to keep their bill of costs as low as possible. Finally, by making responsibility widespread the institution of local government encourages a spirit of self-help and self-dependence. The institution of local government is, as such, a great advancement in the realization of true citizenship. Burke has cogently said, "To be attached to the sub-division; to love the little platoon we belong to in society, is the first principle, the germ as it were of public affections. It is the first link in the series by which we proceed towards a love to our country and mankind."

The vigorous development of local government is the only means of realizing the welfare purpose of every progressive State. Welfare services require a flexible technique to cater for individual cases. The local bodies on account of their nearness to the people, their wider representative character, their natural familiarity with the details of the situation, and their intimate knowledge of the means and wants of the inhabitants are eminently suited to evolve such a technique. The State has really found in them its most effective instrument for social amelioration.

Russia is the home of socialism both national and local. The town Soviets, which are the Russian prototypes of Indian Municipal Committees, besides exercising the usual municipal functions, regulate also the entire political and economic life of the local community. Commerce, industries, retail trade, co-operation, housing, land partition, criminal justice, recruitment and mobilization, protection of the revolutionary regime, supervision and application of the national progress, etc., all come under its jurisdiction. The Soviets also supervise and control all the organs and institutions of government functioning within their area, and may voice the dissatisfaction of the local community with any of them when necessary. They act in the dual capacity of agents of the Central Government and the representative bodies of the local community.

Compared with local bodies of advanced countries, the functions of municipalities in India are less extensive principally in three directions, namely, police, trading enterprises, and the big group of social services comprising health, housing, sickness and unemployment insurance. Some of these functions are not even legally permitted to these municipalities. Apart from the legal restrictions, the main difference between Indian municipalities and their foreign prototypes is that in respect of legally permitted functions, like education or water supply, the actual standard of development here is very low. Then, the government of the local bodies in India is neither local nor is it self-government. They have not the means to extend their activities even if permitted by law. Their own resources are not sufficient. They have to depend to a large extent on the financial help of the State governments through grant-in-aid, loans, etc. The authority that pays must also control and direct. The autonomy of the local bodies, accordingly, vanishes under all encroaching control and direction of the Deputy Commissioner.

**Defects of Local Government.** Critics of local government assert that local home rule narrows the outlook of the people and breeds local patriotism. Such an attitude stifles the life of the community. It is further pointed out that devolution of authority to local bodies not only multiplies administrators, but also results in divided responsibility. The obvious result is inefficiency, delinquency, waste and incompetence. The officers of local bodies succumb to all sorts of local influences as they are "locally selected and locally directed and locally controlled". Devolution of authority also deprives local bodies of central direction and advice. With scanty resources at their disposal, and meagre source of information and knowledge at their command, local bodies cannot perform their functions adequately and effectively, and if they do, they do it tardily and inefficiently.

What the critics of local government say is true to a great extent, particularly in a country like India where the vision of the people is blurred by the barriers of localism and regionalism. To love one's home and locality is the natural instinct of man and there is nothing wrong in it provided it does not inhibit men in performing their higher duties towards their country and its people as a whole. It is our membership of the State which bestows upon us the benefits of devolution of authority and the privileges of working for others with others living in our neighbourhood. Once this becomes the norm of political behaviour of man, local government fulfils the purpose of common consciousness of common good. It binds the people living in different areas in a community of feelings and interests, and in these feelings narrow localism finds no place.

Willoughby suggests a concrete reform. He suggests that local officers should be appointed by the State or Provincial Government, but a local advisory council in each area, consisting of the merited citizens, may be associated with them. The advisory council should be given the responsibility and duty of advising local officers with local problems, to bring to the attention of their superior officers all cases of lapses on their part and failures to perform their duties properly and diligently, to suggest to such authorities proposals which they deem advisable, and to pro-



test against the action of the government where they believe that their areas are not receiving equitable treatment. But this is not the real solution of the problem. Nor does it advance the cause of local government which aims to inculcate the spirit of intelligent and creative citizenship.

**Relation between Local and Central Governments.** The powers, functions and constitution of local bodies are determined by statute. Within the limits fixed by law creating local bodies, they are independent subject to such powers of direction, control and advice which have been specifically retained by the Central Government. But how far is the control by the Central Government desirable? This is, of course, one of the most baffling problems of local administration. There is no uniform practice followed even by the most advanced democratic countries. In France, local government is highly centralised and from the Commune right up to the Ministry of the Interior the whole administration is linked up with one chain. This centralisation and uniformity in France is a sharp contrast to the decentralised character of local government in Britain. The principle accepted and followed in Britain is that a local area has the inherent right to conduct its affairs in its own way, and consistent with its requirements without the interposition of the central authority, unless supervision is clearly demanded in the interests of the public. But in Britain, too, the centralising tendency, during recent years, has assumed alarming form.

The position in the United States is rather appreciable and there is complete local autonomy. Every township is a local democracy, a republic within a republic. The authority of the superior officials of State Government over the affairs of the local bodies has been constitutionally reduced to the minimum. If local authorities exceed the powers vested in them by law or abuse their authority, there is the usual method of judicial redress through courts. In India, the recent Panchayat Acts passed by the State Legislatures have revolutionised the nature of local government. But the government of the municipalities and the district boards is neither local nor is it self-government. At every step of their administration the mystic hands of the Deputy Commissioner and the Commissioner, as representatives of the State Governments, make a direction to control their functions.

It may generally be said that matters assigned to independent local organs should be those in which local separation of interests is clearly marked, local knowledge most important, the need of uniformity least evident, and the co-operation of private and governmental agencies likely to tell most.<sup>11</sup> Where the interests concerned are clearly common to all parts of the State or where the advantages of uniformity are overwhelming control over the administration should be national and not local. But a rigid separation of local interests is rarely complete. A carefully adjusted co-operation of local and central organs is often required to obtain the best results. Experience has shown that Central Government should exercise some control over local bodies, because, as Sidgwick points out, "the Central Government has greater enlightenment

<sup>11</sup>. Sidgwick, *Elements of Politics*, pp. 516-17,

derived from greater general knowledge, wider experience and more highly trained intellects." But such a control should be exercised with a view to the efficient discharge of local duties and responsibilities. Undue interference and direction is bound to destroy local initiative and local responsibility. Excessive central control may also encourage favouritism in the local services, thus, vitiating the very idea of local government. Whenever party spoils intervene, efficiency disappears and national development is retarded.

While we do not discount the practical utility of central control over local bodies, it may, however, be emphasised that the degree of control should vary in proportion to the efficiency of a local body. Were all local bodies of the same standard of efficiency, the problem of supervision and apportionment of functions would have been easier. But this is not so. Everywhere Central Government is continually faced with the difficulty that all local bodies are not equally efficient. This may be essentially due to the differences in the size of local areas and resources of local bodies. The smaller municipalities, howsoever noble the ideal of public spirit of the citizens may be, cannot be expected to maintain the same services as the larger bodies. They have to depend on the doles of the Central Government which necessitate more rigid control on their activities. Moreover, the traditional view that local functions are the concern of the locality itself has lost its validity. There are no local functions in that sense now. Making and maintenance of local roads, lighting, drainage, cleansing, etc., have under modern scientific analysis been found to involve important national aspects as well. Under these conditions there can no longer be any clear-cut demarcation of spheres of influence between central and local governments. They must collaborate, consistent with the requirements of a Welfare State, over the entire field of governmental activity. This means a close integrated partnership between central and local authorities for high achievements in municipal administration. It is, however, "essential to avoid reducing local authorities to the position of mere agents of the Central Government if they are to continue to make their indispensable contribution to the democratic way of life".

### SUGGESTED READINGS

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|-----------------|--|
| Clarke, J.J.    | : <i>Outlines of Local Government.</i>                 |
| Cole, G.D.H.    | : <i>Local and Regional Government.</i>                |
| Gilchrist, R.N. | : <i>Principles of Political Science</i> , Chap. XVII. |
| Jackson, R.M.   | : <i>The Machinery of Local Government.</i>            |
| Jenks, E.       | : <i>English Local Government.</i>                     |
| Laski, H.J.     | : <i>A Grammar of Politics</i> , pp. 410-29.           |
| MacIver, R.M.   | : <i>The Modern State</i> , pp. 390-95.                |
| Robson, A.      | : <i>The Development of Local Government</i> , (1954). |
| Sidgwick, H.    | : <i>Elements of Politics</i> , Chap. XXV.             |

## The Finances of the State

**Public Finance.** The mechanism of government for its proper functioning entails stupendous expenditure. This expenditure must be obtained from the community which is expected to benefit from the many and various activities of the State. The subject of study which considers and investigates the ways in which government taps different sources to raise money and the manner in which it is to be expended for the common welfare is called public finance. Public finance, according to Bastable, "deals with expenditure and income of the public authorities of the State and their mutual relation as also with financial administration and control".

Today, the study of public finance has become more important than what it was in the past. The modern State no longer remains only a police State entrusted with the bare functions of maintaining peace and order within the country and to protecting it against any contingency of foreign aggression. The province of the State has increased very considerably necessitating a corresponding growth in public expenditure and in public revenue. This is due to many reasons. In the first place, the great increase in population has itself entailed an extension in the functions of the States. Secondly, the modern State is vitally concerned in catering services which help to create that atmosphere where the individual can rise to the full stature of his personality. This involves huge expenditure on running the beneficent departments, like education and public health. Thirdly, as society has progressed and wealth has increased State enterprise, too, has increased. It does not only regulate industries but actually undertake many economic activities, such as the public utility services. Furthermore, the State must provide for the poor, the sick, the unemployed and the economically weak. Finally, must be mentioned the enormous increase in the expenditure of the modern State in order to provide for the adequate defence and security of the community. In the atomic age, in which we live, the expenditure on defence and security has increased beyond all conceivable proportions. In fact, there is a mad race between countries for war-preparedness. All this makes the functions of the State many, complex and difficult, and so public finance assumes an important role in public administration.

**Public and Private Finance.** The State and the individual both are concerned how to manage their respective incomes and expenditures.



Although fundamentally all forms of finance must be governed by the same economic principles, there are, however, certain considerations which distinguish the practice of public and private finance:—

(i) The relationship of expenditure to income. In private finance the expenditure is naturally limited by the amount of income. In other words, it is the income that determines expenditure. One must cut his coat according to the cloth he has. In public finance the government first determines what expenditure is to be incurred and then proceeds to find out funds so as to bring the necessary revenue. A government, we may say, arranges for cloth according to the length of the coat it proposes to have.

(ii) For earning has income the individual must work. He cannot order or compel others to contribute towards his income. The State, on the other hand, issues an imperative and thereby compels persons to pay taxes. The State works only when it undertakes an economic enterprise. If an individual's income is not sufficient to meet his necessary expenditure, he may resort to borrowing. So does the State. But there is a difference between private borrowing and public borrowing. The borrowing power of a private person is limited by the credit he can command and the resources at his disposal. The credit of the State is far superior to that of an individual and its field more extensive as it can borrow from within and without the country.

(iii) In private finance an individual tries to save something to meet various exigencies and future liabilities. This is not true of public finance. Surplus is not the deliberate aim of public finance, except in the case of revenue-bearing services like the railways, the post and telegraph service, where a profit may be deliberately aimed at. Generally, every State devises means to have balanced budgets, that is, the total revenues must equal the total expenditures. But balanced budgets are difficult to obtain and they are no guarantee of sound financial policy. Sometimes it is a surplus budget and at another time the budget is deficit. Some statesmen are of the opinion that it is advisable to have surplus budgets in order to meet deficits in bad times.

(iv) The public and the private expenditures are governed by the same principle of maximum satisfaction. In actual practice, governments seldom follow the principle of maximum social welfare. Party politics and other political considerations influence public expenditure in a modern democratic State.

(v) Finally, the State should not, and usually it does not, discount the future at as high a rate as an individual. Individual expenditure is generally governed by immediate and not by far distant considerations. The long-period factor is especially important in the services rendered by the State. It may even undertake schemes and incur expenditure which are to benefit only future generations.

## THE BUDGET

**Definition.** We said that every State performs functions and how broad and how limited the functions it undertakes, it must meet the two-

fold problem of obtaining funds to pay for the services it renders, and to manage the expenditure to be incurred thereupon. Public funds are raised primarily through taxation, although there are also other sources of revenues. Generally, expenditure is controlled through a detailed financial plan known as the Budget. The Budget is, thus, a detailed financial statement, drawn in advance of the fiscal year to which it applies, which lists in detail all anticipated expenditures and revenues, in a balanced accountant's statement. The fiscal year in most of the countries begins on April 1, and ends on March 31, of the following year.

No State ever had a financial system entirely planless, but until comparatively modern times, well-co-ordinated schemes were the exception rather than the rule. Towards the end of the eighteenth century Britain, recognizing the necessity for reviewing fiscal policy as a whole, introduced what may be considered the earliest modern budget. The use of the word budget in public finance originated in the expression "The Chancellor of the Exchequer opened his Budget," which was applied in Parliament to the annual speech of the Chancellor of the Exchequer explaining his proposals for balancing revenue and expenditure.

By definition, a budget must give a complete picture of the Government's finances. Long-term financing of major public schemes constitutes the **capital outlay budget**, and should show in detail the cost of the capital schemes and the methods by which the cost is to be met. The expenditure for the current year, for ordinary running expenditures of the Government, and for such extraordinary expenditures such as is necessitated or likely to be required as relief, etc., constitute the **current budget**. This must likewise show the means of raising funds to meet the expenses, whether by taxation, miscellaneous revenues or otherwise.

The budget must also give a clear picture of the public debt. Although a complete statement of the total public debt need not be included, if sound financing is to be effected, a condensed statement of it should be made, with statement of the obligations to mature during the financial year.

**Preparation of the Budget.** Well in advance of the time at which the Budget is to be presented to the legislature, Heads of the various Ministries or Departments submit their estimates of the funds needed for the fiscal year to the Finance Ministry or Department. In the United States these are submitted to the Director of the Bureau of the Budget. The Finance Ministry examines the estimates in its relevant branch and determines the reasonableness of the demands. It is the work of the Finance Ministry to prepare a co-ordinated statement of the needs, itemized by various Ministries or Departments, and a statement of funds required to meet them. Often the Finance Department has wide discretionary power to change the requests submitted to it.

**Passage of the Budget.** In the United States, the President transmits the Budget to Congress with his message outlining his financial scheme. The Constitution establishes the supremacy of Congress by specifying that "no money shall be drawn from the Treasury but in consequence of appropriation made by law." The Constitution also provides that all bills for raising revenue shall originate in the House of Representatives. The

usage adds to it that the appropriation bills are also initiated there. The Senate possesses co-equal powers with the House of Representatives in accepting or rejecting financial bills.

In Britain, presentation of the Budget by the Chancellor of the Exchequer, when he delivers his budget speech, is the main occasion of the year for reviewing the finances of the Government and the economic state of the nation. The formal action by Parliament that renders legal the expenditure of public money takes the form of an Act of Parliament. Such an Act authorises the payment of money out of the Consolidated Fund. Consolidated Fund is a great reservoir into which all the revenues of the kingdom are poured and out of which all the money required for public expenditure is drawn. The Act of Parliament which authorizes the Government to draw money from the Consolidated Fund is known as the Annual Appropriation Act. The Consolidated Fund is replenished through moneys paid into it by authority of the Act of Parliament which gives legal validity to the raising of revenues. The principal Act in this respect is the Annual Finance Act.

The Indian Constitution has adopted the fundamental principles governing the British financial system, that is parliamentary control over the receipt and expenditure of public money. The procedure of the passage of the budget is also more or less identical.

### EXPENDITURE OF THE STATE

What functions the State should legitimately perform is a subject of great controversy. At one time the theory of Individualism or *laissez faire* was prevalent. It was maintained that the very existence of the State implied the association of its members for defence against external enemies and for the maintenance of internal peace and order. It was also conceded that the effective discharge of these **protective** and **primary** functions necessarily involved the **secondary** activities of taxation, and legislation. Beyond these activities the State was to do nothing and every individual should be left alone with the maximum of economic freedom. It was asserted that the State was a necessary evil and it should perform only negative functions.

But it soon became apparent that the policy of non-interference or *laissez faire* led to the widespread evils of the factory system, to the sordid exploitation of the workers, and to the terrible oppression of the poor. The negative role of the State was severely criticised and it was emphasised that the State had duties other than the provision of army, navy and police, and that a defence of quite a different kind was necessary. The community, as a whole, must unite to enforce right against might, to protect the economically weak against the economically strong, to prevent the exploitation of the poor by the rich and to restrict the growth of poverty and disease. It came to be acknowledged that certain services of public utility could not be left to private enterprise. The State, in brief, has positive functions to perform.

This viewpoint was actively supported by the Socialists who advocated nationalisation of the factors of production. Russia, China and a few other countries are, today, the only countries which have socialised



structure of society. Other countries of the world are capitalists and recognise *laissez faire* to be the basis of society. But it is not the Individualism of the old pattern. The modern individualist State has emerged as a guardian of the rights of man and community. Its end is to uplift man from the political, economic and social degradation. The functions of the State, therefore, are not only political, they are economic and social as well. It means considerable expansion in the province of the State and, thus, it brings into prominence the nature of public expenditure.

**Analysis of the objects of Public Expenditure.** The general principle of public expenditure in the modern State is: that the government is for the good of the governed and the best criterion of State interference and State expenditure in any form is the benefit which will accrue directly or indirectly, to the community as a whole. "Any State, then, which directly or indirectly develops the natural or human resources of the nation or leads to their more economical use may be expected to increase national prosperity by increasing the national wealth and may thus be expected ultimately to 'pay for itself' given the important qualification that the gain due to the increased expenditure is not less than the loss caused by the heavier taxation."

Following is the analysis of the objects of public expenditure:

(1) The first object of the public expenditure is the provision of services, yielding indivisible benefit. In this category are included maintenance of law and order, defence, safeguards against spread of diseases and epidemics, etc.

(2) The provision of collective benefits or services that cannot, even if it were desirable, be undertaken by private enterprise, e.g., construction and maintenance of roads.

(3) The provision for the sick, destitute and unemployed.

(4) All such functions in the field of industry where the primary object is to secure great efficiency and output, for example, public utility services, as railways, posts and telegraphs, airways, supply of gas and electricity.

(5) Functions in the field of income and social standards where the chief aim is to safeguard the interests of citizens and mitigate the effects of unequal distribution of income. These functions include control and regulation of currency, exchange and credit, social insurance, factory legislation, fixing of minimum national wages, protective tariffs, mechanism of rationing and price control, etc.

**Principle of Maximum Social Advantage.** If public finance is to be treated as a scientific branch of public administration, the principle of general welfare must be at its root. The principle of general welfare, to which Dalton gives the name of Maximum Social Advantage, aims at securing the great social good for the community by judiciously regulating the expenditure and the revenue of the State. According to Dalton,

the two main conditions of an increase in the welfare of the community are: (1) improvement in the productive power, and (2) improvement in the distribution of what is produced. Public taxation and public expenditure should, accordingly, be conducted in such a way that the productive efficiency of a country may be increased, so that "a larger product per head of the population shall be obtained with a smaller effort." This implies (i) a better method of taxation, (ii) the reduction in the inequalities of income, and (iii) the nature and composition of public expenditure.

**Public Expenditure in relation to Production and Distribution.** The nature and composition of public expenditure is of immense importance, because the manner in which public money is spent exercises considerable influence on the production and distribution of wealth. The defence of a country and maintenance of law and order are, of course, necessary for the well being of the community, but this expenditure should be and must be reduced to the minimum level without endangering the safety of the State. The money saved from this kind of unproductive expenditure can usefully be employed for promoting and developing productive and beneficent departments. A greater figure of expenditure devoted to the nation-building schemes, like education and health, adds to the mental and physical efficiency of the people as a whole and contributes to greater production of national wealth. The State must necessarily be vigilant about the proper development of industries and the workers employed therein. It is also necessary that the State should provide for the organisation and conduct of researches in different spheres of economic, political and social activities. Similarly, due proportion of expenditure of the State should be divided toward such undertakings as the public utility services and those industries where private enterprise is not likely to come forward.

From this brief survey, it will be clear that a well regulated public expenditure greatly contributes to the growth of the national wealth and yields the maximum social advantage. It tends to remove inequalities in the distribution of national wealth by taxing the rich and benefiting the poor classes of the community by the provision of goods, services and amenities which help to better their lot. If the State adopts a progressive policy of taxation and imposes high death duties, and spends a big portion of the money realised in providing the poor with better means of employment, better conditions of work, national minimum wages, better and sanitary houses, free and advanced educational facilities, free and highly developed facilities and medical aid, it produces better fed and more contented citizens who are a real asset to the nation. But this can be possible only when the guiding principle of public expenditure is the attainment of maximum social advantage. According to Dalton, "The two chief conditions of an increase in the economic welfare are, first, improvement in productive powers, and, secondly, improvements in the distribution of what is produced."

## PUBLIC REVENUE

The provision of adequate revenue to meet the ever-increasing expenditure of the modern State is obviously a matter of considerable diffi-

culty and intricacy. In normal times every progressive community endeavours to meet its annual expenditure out of its annual income. The State obtains its income chiefly by taxing its citizens. It may also include smaller revenues not of the nature of taxes. Following are the permanent sources of the revenues of the State:

1. **Regular Revenues.** (i) Revenues from State-ownership of (a) land and buildings, (b) productive undertakings, for example, incomes from postal services, State-owned railways and other public utility services.

(ii) Revenues from private income, including taxation in all its forms.

2. **Irregular Revenues.** These are miscellaneous sources, casual and irregular in nature such as fines, penalties, gifts, forfeitures, etc.

**The Nature of Taxation.** Taxes are levied practically upon all persons in the community to cover the cost of the services rendered by the State. A tax is a compulsory contribution which the citizens are required to pay for the services performed by a public authority. The essence of a tax, as distinguished from other charges of government, is the absence of a direct **quid pro quo** between the tax payer and the public authority. While levying a tax, it is not the intention of the government to render a service to the tax-payer equivalent to the amount of the tax paid by him. In other words, you cannot refuse to pay a tax on the plea that you do not use a service.

Taxes are usually classified into **direct** or **indirect**, although these classifications are sometimes overlapping and are not always mutually exclusive. Direct taxes are those paid by the individual directly on the basis of his possession or receipt of property. They may be based on real or personal property, tangible or intangible, owned at a specified time, or received during a specified period. Indirect taxes are those which are levied on particular articles, or transactions, and which may be borne by others than from whom the tax collector receives payment.

As to the nature of taxation in general several theories have, at different times, been put forward.

(i) One of the earliest theories was that the contribution made by every citizen to meet the expenditure of the State should be proportionate to the benefits received by him from the State. A tax was, accordingly, regarded as a payment made by each individual in return for benefits received from government. There was, as such, a direct **quid pro quo** in a tax.

The benefit theory is held to be unjust and impracticable. It is obviously inconceivable that the weakest members of the society, who may be assumed to benefit most from the services of the State, should be made to pay the heaviest contribution. But as Bastable points out: "If security is to be sold like an ordinary commodity, there ought, on the strictest commercial principles, to be some allowance made to the purchaser of a large quantity."<sup>2</sup>



(ii) The exponents of the Financial Theory are not concerned with equity. They aim exclusively at obtaining the necessary revenues as expeditiously and as cheaply as possible. The aim of the public finance is, thus, to raise the largest sum of money with the least trouble. Accordingly, each person should pay in proportion to his income, of course, the rich paying more than the poor.

Closely connected with it is the "cynical" theory of taxation. The advocates of this theory attempt to secure the needed revenue in such a way as to encounter the maximum taxation with least opposition. It is maintained that any tax is good which yields a large income with comparatively little protest. This policy of taxation is consistent with the maxim attributed to the French Minister Colbert: "Pluck the goose with as little squealing as possible."

(iii) **The Socio-Political Theory.** According to this theory a tax is regarded as an instrument for attaining an economic or social end, such as reduction in the inequalities of income, or fostering of certain industries.

The advocates of this theory deliberately use the fiscal machine to reduce the gap between high and low incomes, or would employ tariffs and such other measures as a means of stimulating production.

(iv) **The Sumptuary Theory.** Taxation is frequently advocated to restrict the consumption of luxuries or of noxious articles. The object in such a kind of taxation is moral.

**Conclusion.** It is impossible to devise a system of taxation which may satisfy different points of view as to the nature of taxation. Nor is it possible to devise a single system of taxation which would be regarded as satisfactory from the point of view of both the tax-payer and the State exchequer. All modern States adopt a mixed system of taxation including both direct and indirect taxes, spread over property, income and consumption, the whole system conforming, as far as possible, to the various canons of taxation discussed hereafter. It is true that the enormous expenditure of modern governments necessitates that the system of taxation should be productive from the point of view of the government. But the principle of equity cannot be disregarded. A tax should not be devised in a manner which affects adversely the productivity of the tax-payer. Nor should it entail a heavier burden on the poor and lighter one for the rich. It must be consistent with the principle of the ability to pay, which naturally means that the people with higher incomes should be called upon to pay higher taxes. "Justice between the various classes is essential so far as it can be attained, and taxation which conforms to the general principle of equity is to be favoured even though it may not yield the maximum economic benefit." Nevertheless, it is impossible to devise a system of taxation which will satisfy classes and "individuals in the multitude of different circumstances which may exist in modern society". There are always some cases in which conditions make the burden of taxation press more heavily than it would in other circumstances. It is, however, politic and more satisfactory to adopt certain general principles to meet each individual case. This will mean less inconvenience and fewer hardships. "The best tax systems are based on one

principle; they are usually a compromise between a number of systems, and have been devised as the result of long experience and careful consideration of the peculiar needs of the community concerned."

**Canons of Taxation.** No discussion on the principles of taxation can be complete without a reference to the canons of taxation laid down by Adam Smith.<sup>3</sup> Although the theory and practice of taxation has been considerably extended since his days, yet his propositions are still fundamentally true and they remain the starting point of sound public finance:

(i) "The subjects of every State ought to contribute towards the support of the government, as nearly as possible in proportion to their respective ability; that is in proportion to the revenue which they respectively enjoy under the protection of the State. In the observation and neglect of this maxim consists what is called the equality or inequality of taxation."

Equality here involves equality of sacrifice, and not the equality of amount paid. The poor and the rich both should pay what they can pay and equality and justice demand that no one should pay more than what he is able to pay.

(ii) "The tax which each individual is bound to pay, ought to be certain, and not arbitrary. The time of payment, manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person."

A tax should not be arbitrary. Every one must know well in advance what he has to pay, when he has to pay, and where he has to pay. When he knows all this, a tax-payer can adjust his expenditure with the least inconvenience. The government, too, becomes certain, as far as possible, of its receipts.

(iii) "Every tax ought to be levied at the time or in manner, in which it is most likely to be convenient for the contributor to pay it."

A tax should be collected at a time when the tax-payer has the means to pay. If public authorities demand payment when it is not convenient for the tax-payer, it becomes burdensome and there is probability that it may not be paid at all. A convenient tax is justified on the grounds of productivity and good government, and also from the point of the tax-payer, particularly when he belongs to the poor class in the community. The greater the convenience the less waste of time and of resources involved in collection and payment.

(iv) "Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the State."

The machinery required for collecting taxes should be simple and economical so that the cost of collection and the loss to the individual and the community should be small in proportion to the proceeds. It is, therefore, necessary that an able Finance Minister should always see that

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3. *Wealth of Nations*, Book V, Chap. II, Vol. II.

the cost of collection does not exhaust the major portion of the receipts. Similarly, a sound system of taxation should scrupulously avoid all taxes which discourage saving and hamper the growth of capital.

Following are a few more principles for a good system of taxation which may be added to Adam Smith's canons enumerated above:

(v) From the point of view of the government a tax should be productive of revenue. But no tax should be imposed which may tend to diminish the economic resources of the community. A tax may be immediately productive of a large revenue, yet under certain conditions it may ultimately result in a reduction in the nation's income.

(vi) It is better to have a few productive taxes than many less productive. It is always cheaper to collect a few remunerative taxes than a large number of smaller amounts spread over a wide field.

(vii) The tax should permit of an automatic growth as wealth and population increase.

(viii) The tax should be elastic and it should be responsive. The system of taxation should contain at least some taxes which permit of an increase in the rate and yield in order to meet emergencies without necessitating an increase in expenditure on administration or collection.

(ix) The system of taxation should be as simple and intelligible as possible. If it is complex and difficult to understand, it may create doubt and friction between the government and the tax-payer. A simple and intelligible system of taxation creates confidence, a better appreciation of the needs of government and, at the same time, it injects political consciousness in a citizen.





PART THREE

# THE FUNCTIONS OF THE STATE





## The Limits of Political Control

Having studied the origin and machinery of the State, we now ask the question: what is all that machinery for? What is it to do? In other words, what are the proper functions of the State? Answer to this question is the real issue of Political Science and, yet, this issue has not so far found a satisfactory solution. It is no answer to say that the State must act for the general welfare or common interest. There is no activity of the State and no action of government, down to the most ruthless and tyrannical, which has not been defended on the ground of general welfare. Can we, then, lay down any general principles by which to test the activities of the State and say with definiteness that the claim of general welfare is justified by the results? Here we return to the same old question with which we began our study of the State: what is the purpose of the State? The purpose of the State can best be understood if we clearly understand the relationship between the State and society.

**The State in relation to society.** It may be well to remind ourselves of what we said in an earlier chapter that to "identify the social with the political is to be guilty of the grossest of all confusions which completely bars any understanding of either society or State".<sup>1</sup> To equate the State with society is to justify State interference in all aspects of human life. The Greek City-State was an omniscient State, because among the Greeks there was no difference between the State and society. The State was to them all in all and it embraced their entire life. The citizen was nothing except as a member of the State and his whole existence depended on and was subject to the State. Plato's Communism was based on the conception that the State was the supreme entity for which the individual must sacrifice all that he had, even his hearth and home. To Aristotle the State was prior to individual and it continued in existence for the sake of good life. The nineteenth century German theory, represented in its highest development in the writings of Hegel, regarded the State as the highest creation of reason and morality. The individual is moral because he is a member of the State. He should, accordingly, render complete submission to the State. It is, in fact, the moral duty of the individual to obey the State in whatever commands it may issue. There is no limit to its functions. A dictator, too, will pay scant attention to the distinction between the State and society. There is no sphere of life with

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1. MacIver, R.M., *The Modern State*, p. 5.

his State will not cover. To Hitler and Mussolini there was nothing above the State, nothing beyond it, nothing besides it. So are the demands of Soviet Russia and other Communist States of her pattern.

The State exists within a society and in personal composition both are one, but in form and purpose they are different. The State is one like so many other associations which compose a society. It exists for one single purpose whereas society exists for a number of purposes, "some great and some small", as Barker puts it, "but all in their aggregate deep as well as broad."<sup>2</sup> Though we do not equate the State with society, yet the State provides the framework of the social order. According to Laski the State is a way of regulating human conduct and it prescribes rules of behaviour by which men must regulate their lives.<sup>3</sup> The State, as such, represents the highest form of social organisation. It exists to regulate and cement social relations. It binds people together and enjoins upon them certain uniform rules of behaviour without which we cannot think of a well ordered social life. Society is, therefore, held together by the State. But the State is an agent of society and as an agent of society it has certain rights. Like all other rights, the rights of the State, too, are relative to its functions. The State is not exempt from the imperative thus far and no further to which all agencies of society are subject.

The State, observes MacIver, "is a structure not coequal and co-extensive with society, but built within it as a determinate order for the attainment of specific end."<sup>4</sup> Its functions do not embrace the whole range of human activity. The State may set the keynote of the social order, but it does not equate the State and society. The realisation of this difference between the two is really fundamental for the proper understanding of the State and its functions. It is all the more necessary because the will of the State is really the will of the government. The sovereignty of the people is, no doubt, a dogma of democracy and it is the basis of all political decisions but in actual practice it is nothing more than an indication in a vague manner of the general direction in which the sovereign people wish to see events move. The effective source of State action is the small number of men who constitute the government and whose decisions are legally binding upon the community. If the State and society were to be identical, all human relations and social activities will ultimately be at the mercy of the few men who constitute the government and act on behalf of the State. In the name of the general welfare and common interest the government may prescribe anything. Its interference in the social order may become all-comprehensive, and instead of acting as an agent of society for the maintenance of rights it may begin creating rights "as the lordly dispenser of gifts".

**The Purpose of the State.** The government, says Laski, "are the trustees and governors and it is their business to glean the needs of society and to translate those needs into terms of effective statutes. The

2. *Principles of Social and Political Theory*, p. 42.

3. *An Introduction to Politics*, p. 15.

4. *The Modern State*, p. 40.

purpose of the State finds its personification in them." The purpose of the State is the ultimate aim for which it exists. The aim of the State is two-fold: the promotion of individual welfare and the realisation of the collective ends of society. It is a means to an end and not an end by itself and being a means it has to perform certain functions. But moral means must be adopted to achieve desirable ends. Every act is in pursuance of an end and the end is merely the result of a series of acts that are undertaken as means. The functions of the State, which are the means, must be justified in relation to its primary end. The end of the State is to create conditions of the freest possible development and creative self-expression of its members. Whatever functions the State undertakes and whatever action the government takes in consequence thereof, it must be proved that it enables men to realise the best that is in themselves and it helps ultimately the enrichment of their happiness and spiritual uplift. This is the first criterion by which the activities of the State should be tested.

There have been sharp differences between the Individualists, the Idealists and the Socialists over the question whether the State is a means to an end or an end in itself, and whether the State helps or hinders the development of the individual. It is now universally accepted that the purpose of the State is the organisation of justice and happiness and it seeks to create conditions consistent with the interests of society as a whole, under which the individual leads a fuller life and may complete the fulfilment of his personality. The Idealists give to the State a separate, mystic personality, "a march of God on earth" and the individual depends for his existence upon it. He owes it a debt of gratitude for granting him all those moral conditions which enrich his personality and develop his faculties to their full stature. The State, they regard, an end in itself and the individual a means in the realization of the highest expression of social morality, which the State represents. But this is not true. It is the people which make the State. Without the people there can be no State and to submerge the individual in the State is to destroy his individuality. The ultimate purpose or end of the State is to enable the individual "to achieve his best self". Social good, in the final analysis, means the good of the individuals who make up the social whole. Without them neither there is society nor the State.

Graham Wilson gives a matter of fact answer to the question whether the State is an end or a means. He says, "For those who stress consent, the State is clearly the means; for those who believe in the moral or the force theory, the State becomes an end in itself whether good or bad." The political thinkers belonging to the latter school exalt the State to mystic heights and make the exercise of power as its characteristic expression and estimate unending "achievement to be won by domination and regarding coercion as the primary condition of social order".<sup>5</sup> But this extolling of the State, one way or the other, is morally wrong and politically dangerous. The argument of force is might and coercion and it is only the clumsy and stupid, as MacIver says, who seek to attain their ends by force. Force holds nothing together and when it is made the

5. MacIver, R.M., *The Modern State*, p. 426.



basis of the State, it crushes the personality of men and destroys the social order which the State is required to build and sustain. By its very existence the State performs a service and, as such, it orders and commands. But "it commands only because it serves, it owns only because it owes". The State owes to its members a duty to build and sustain that universal framework of social order within which their lives may seek out the ways of their fullest development. The State is an organisation of force to the extent that it performs its functions adequately and efficiently in creating an atmosphere in which human purpose can be realised without undue interference or disruption. The mere fact that the State retains force and reserves to itself its use deters individuals and groups to use force in the attainment of their ends. It is, therefore, a potential instrument and the State should not use it unduly. Let force remain subservient to the common welfare and common will. If it becomes master it will destroy not only "material goods but also the cultural gains, the spirit of truth, the work of the mind, the fertility of thought".<sup>6</sup> Hitler's Germany and Mussolini's Italy are its glaring examples.

When we subordinate force to the common welfare and common will we accept the State as an organisation of co-operative citizenship, a fellowship of men aiming at the enrichment of common life. Its moral character is not different from any other association and it exacts loyalty from us "upon the same grim conditions that a man exacts loyalty from his friends".<sup>7</sup> We always judge a friend by his deeds and owe him loyalty accordingly. We also judge the State by what it does. The State is, therefore, "subject to a moral test of adequacy".<sup>8</sup> If in order to protect and promote the well-being of its citizens, the State is compelled to use force, then, force should be justified by its value to the society. The State, in brief, does not possess force without conditions. As an agent of society, its purpose is service and those who serve strive for results rather than exalt for power.

### FUNCTIONS OF THE STATE

We have said that the State is subject to the imperative 'thus far and no further', that is to say, what the State should do and what it should not do. Men's views on this problem have varied widely at different periods of history and from one country to another. In the Europe of Middle Ages life was essentially ruled by customs and traditions, whose control was no less rigid than that of the State. But there was no State in the real sense of the term. The State and the Church both ruled together, the former in the temporal sphere and the latter in the moral. The functions of the State were to maintain law and order, to dispense justice and to conduct dealings with foreign States. There were no good roads and the only method of transport being the horse, the average individual lived in a small and isolated community, in which he was far more conscious of the impact on his life of his employer, the lord of the manor and the priest, than he was of the State.

6. *Ibid.*, p. 423.

7. Laski, H.J., *A Grammar of Politics*, p. 37.

8. *Ibid.*, p. 28.

With the growth of industry and commerce in the sixteenth and seventeenth centuries, the rigid mediaeval system of control, based on custom and tradition, gave way to systems of private enterprise. These were encouraged by governments themselves as increased production increased the national resources and so the national power and prestige. The industrialization had its own problems. It changed the social and economic structure of society and brought into existence the new relationship between the employer and the worker replacing the mediaeval relationship. The pace was accelerated in Britain which was the first to establish a national State. In France, the rhythm of change was different and feudal relationships persisted right up to the Revolution of 1789. Russia was on the other extreme and here pre-industrial civilisation persisted up to the revolution of 1917. The process of transformation to modern industrial capitalism in the nineteenth century so radically changed the nature of Britain's civilisation that enlightened public opinion demanded from the Government enactment of labour regulations which should create hygienic labour conditions in the factories and save the industrial labour from the spread of disease.

Nevertheless, in Britain of the nineteenth century, politicians and economists believed that the State should interfere only in so far as intervention was necessary to prevent flagrant abuses of humanitarian principles and to safeguard public health. The modern concept of a welfare State, with the duty of protecting the individual against natural inequalities and misfortunes, was still unborn. The State was expected to leave the individual alone, *laissez faire*, to determine his own destiny and the fullest and free development of his own capacities and interests. The principle of *laissez faire* meant the free play of competition which was the law of nature. Most people felt that it was natural and inevitable for some to be rich and privileged and others to be poor and miserable, and that the State ought not to interfere, except to ensure conformity with some rudimentary rules of social life.

When Marx published the first volume of his *Das Kapital* or the *Capital* in 1867, the picture of society was not fundamentally different. He concluded that the State was using its authority exclusively in the interest of the economically dominant class. He argued that poverty was unnecessary and it was the result of special economic and political conditions. It could be got rid of by changing those conditions, but the economically dominant class, which was also the ruling class and used the machinery of the State to perpetuate the interest of that class alone, would never attempt any change to remove poverty and misery of the masses. Hence there must be a revolution. There were social reformers in the nineteenth century, however, who saw the State as the potential instrument by which a more just society could be created, without the upheaval of a revolution. They pleaded that it was the duty of the State to step in and to interfere in what had been hitherto the citizen's private affairs, with the object of removing injustices of the capitalist system. They protested against the social and economic anarchy which the capitalist system had produced. They, therefore, proposed that land and capital be placed under social ownership in order to ensure a more equitable distribution of the means and appliances of happiness. From the

economic point of view they argued that the industry would be more efficient when it was socialized, and from the moral point of view it would ensure justice. With the social legislation of the nineteenth century, there was born a concept of positive State interference which was to develop during the following century into the social service State, with its comprehensive system of social security from the cradle to the grave.

Since then the province of the State has extensively increased. Governments in all countries have now fully realized that chronic want among their people is an economic liability and a political danger to the State. But all governments do not perform identical functions. They vary with the degree of social and economic development of the people and adjust as their needs and requirements demand. No government can for long remain unresponsive. It must ultimately undertake tasks which are dictated by changing conditions, though one government may be more alert in sensing the needs of time or demands of the people. But whatever the government does must be explained and justified in relation to the primary end of the State, the common good. Common good cannot be divorced from the individual good. Common good really means the all-round perfection—physical, mental, moral, religious, economic—of all individual members of the State, and even the rest of humanity. No living individual or group of individuals should be positively excluded from the benefits of the State, and if they are excluded the State must justify that such an exclusion is for their own all-round perfection. This means that the conception of the "Police State" has been finally abandoned and with it the old classification of the functions of the State. Today, the State is accepted as a "welfare" or the "Social Service State" with new significance of functions it is required to perform. These are divided into three main categories: Protective or Police, Welfare or ministrant, Economic and Regulatory.

**1. Protective or Police functions.** Protective or Police functions are those indispensable and essential activities of the State upon which its existence depends, such as the preservation of external security and the maintenance of internal peace and order. If the State is to exist as an independent sovereign State, its first duty is to secure universal order within its frontiers and to defend itself from all probabilities of foreign aggression. For this purpose the State must be equipped with military forces of all kinds and in possession of modern weapons. Defence of the State also necessitates manning the industrial resources of the country and applying nation's scientific knowledge to the task of defence. As long as we live in a world where war is an ever present possibility, the defence activities of the government will be many and varied and they will, as such, impinge on all aspects of the lives of citizens.

If defence of the country is the primary function of the State so is the maintenance of internal peace and security. To ensure organized community life, the State must keep adequate police force and make laws universal in application with a view to regulate the conduct of its citizens. The offenders should be punished and the crime repressed. The government, accordingly, administers civil and criminal justice, and protects citizens in the enjoyment of their life, liberty and property and other civil and political rights. The State, today, also exercises control over certain



aspects of the family life of the individual such as prescribing conditions for marriage, divorce, inheritance, adoption and care of children, provision for the maintenance of wife, etc. These are essential conditions of a happy family. The State is a system of relationships between individuals and family is the basic and moral system of such relationships.

Another function closely connected with the maintenance of internal peace and external security is the development and management of the major agencies of transportation and communication. Well developed means of communication and transport make the State a viable unit, knit the people in fraternal bonds of togetherness and enable them to share one another's weal and woe. They are, in brief, the nerve centre of the country's social, economic and political life.

There are other essential functions that all, except the very simplest governments undertake. They include the establishment and maintenance of certain standards with which all subjects of the State must comply in their dealing with their fellow citizens. This function may extend to the regulation on markets, the control of weights and measures, minting and coining of money, the control of prices, etc. These functions are so primary that they found their due place in the Athenian list of State functions.

**2. Welfare functions—Order and Protection.** But these are mere police functions and no State can afford to remain simply this. Being an organ of society, it is the primary duty of the State to serve the purpose for which it came into existence. It must create those conditions and provide for an atmosphere in which every man gets an opportunity for the development of his faculties so that he may grow and expand to the best of his capacity and ability. This is the real essence of order, which the State is charged to maintain. Order should not be merely for order's sake. It should serve to ensure justice and happiness for all by regulating the dealings of citizens with one another, by checking disorder and high-handedness of one class of people over others, and by maintaining all those rights which are fundamental to the existence and spiritual uplift of man. When the government does so, the order which it maintains becomes a part of the larger task of the State, or to put it in the words of MacIver, "It is not order for the sake of order but, order for the sake of **protection and of conservation and development.**"

To protect the weak against the strong is the modern interpretation of the maintenance of order and consequently an essential function of the State. It means that the policies of the government should be so determined and its laws so formulated that equal opportunity is provided to all to grow and expand and no one is denied the basic necessities of health and decent living simply because of the accident of birth or misfortune which is beyond man's control. To express it in the words of President Roosevelt the State should strive to establish a social order which should ensure "freedom from want" and "freedom from fear" for all. These are welfare functions and a government which claims to be responsive to the needs of the people cannot afford to ignore them. "This expansion" in the functions of the State, MacIver remarks, "has done much to change the very conception of the State, so that from being, in the eyes of those subject to it, mainly an instrument of power it has become, so far as its

internal activities are concerned, in large measure an agency of service". The State has a collective life and the attainment of common purpose depends upon the welfare of every individual.

The welfare of the people involves, in the first place, their physical welfare. It is now generally admitted that the State has a definite responsibility for the physical welfare of its members, because the happiness and prosperity of a nation are directly dependent upon their physical fitness and vitality. The Public Health Schemes, on which every State today spends large sums of money, are both preventive and curative. The idea of prevention is largely of the twentieth century. Diseases must be fought and checked, hygiene developed and the medical aid guaranteed. In industry hours of work must be limited, conditions of work in shops and factories must be fixed, and security against sickness and disability ensured. It is impossible to make a complete list of those departments of collective life which may either be regulated or controlled by the State in order to maintain the health of its members. Good health is both a prerequisite for the success of the personality of the individual and a necessary condition for the enjoyment and exploitation of success.

Development of human capacities is another aspect of welfare, and education ranks the foremost of all. There are few States now that do not feel responsible "for the procuring and dissemination of knowledge", as Lindsay calls it. Popular education is necessary for the preservation of those conditions of freedom, political and social, which are essential to free individual development and creative self-expression. Education not only equips the citizen with the accomplishments of citizenship, but it also provides him the means of access to adequate opportunities. "It is the key-stone of the arch of good life." There can be no other agency than government which can undertake obligations so universal in character in providing popular education.

National State-controlled systems of education, from infant school to university, now exist in almost every country and this came about, mainly in the last hundred to hundred and fifty years, from two absolutely different causes. France and Prussia were the pioneers of State education on the ground that the State could not leave the making of citizens to private hands. "It must mould the young to the proper shape, give them the right point of view, exclude dangerous ideas and risky experiments." It was, therefore, not a concept of the Welfare State and the plea for the development of human capacities which prompted France and Prussia to adopt the system of State education.

In other countries, especially the Anglo-Saxon, State education came from the inadequacy of private enterprise. There was no pressure of political uniformity. Popular education was deemed a social necessity, because without it the citizen had no chance of mental development. Denominational institutions had neither the resources nor the means to provide for universal compulsory education. It was, thus, the need of educational opportunities in the name of freedom which brought education in these countries within the ambit of State functions. But the difference of approach has resulted in wide differences of educational policy, uniformity being the aim of one, variety and experimentation of the other. All the same, public education has a great task to accomplish in enabling

the young, the hopes of future, to enjoy the best of their lives by driving from the treasures not only of their own country but of the world the worth and wonder of human achievement. It is a road of intellectual expansion and adventure and every progressive State, therefore, makes for the organisation of a comprehensive system of education, basic and higher, general and technical for all citizens.

But the most important function of a Welfare State is the creation of conditions which assure social justice by removing social iniquities created by capitalism. Poverty and unemployment have been problems in all except the most primitive society. These problems did not become less acute with the advance of civilization; on the contrary industrialization involved profound changes in society and brought with it many new problems. Intervention of a money economy created the wage system and urbanization, and labour mobility weakened the communal ties leaving the worker to rely primarily upon himself and his ability to earn. For the great majority, therefore, constant employment became a necessity and the unproductivity of old age a grim prospect. Then, there were the rigours of underemployment, uncertainty of employment, permanent or temporary disability involved through accidents and sickness and the horrors of the wage system.

It was, under the circumstances, thought that only a system based on socialist doctrines could assure social justice. But European governments, determined to retain capitalist system, asserted that social security laws could operate harmoniously within such a system and stabilise it by mitigating the effects of business cycles. Britain was the first to insure workers against the hazards of unemployment. A national compulsory unemployment insurance plan was established there in 1911, and during the following quarter century, most of the major European countries passed similar laws. The Beveridge Plan in Britain attempted to provide what has been called "the cradle to grave security" and in pursuance of that Old Age Pension, Unemployment and Sickness Insurance, Maternity and Accident benefits to workers were put into operation. The Labour Government devised a scheme of National Health. In the United States there are Old Age, Survivors and Disability Insurance, and a Plan for Public Assistance for needy old persons who could not benefit under the insurance system, children who had been deprived of support or care because of the parent's death, disability, or absense, and needy blind persons. The Social Security Law of 1935 provided for unemployment insurance financed by employers' contributions. Workmen's Compensation Laws provide for adequate compensation to the workers injured on the job, or in the event of fatal injury their survivors receive death benefits. Next, there are provisions for Sickness or Temporary Disability Insurance, The Guaranteed Annual wage in the principal Automobile, Steel, Rubber and Aluminium manufacturing industries, etc., etc.

Thus, the functions relating to social security provide a high degree of protection against the misfortunes and hazards of life. All schemes of social security signify that man can no longer be regarded simply as a 'unit of labour power' and that the modern State accepts obligations "meeting certain dependent needs of the individual and the family."



3. **The Economic and Regulatory functions.** The functions which we discussed and enumerated above are such that they could in principle be undertaken by any type of government, in any stage of the development of the State, although the extent and manner of operation would of necessity vary with the changing conditions. Directed to the betterment of the conditions of living for the members of the State, they do not imply any particular order. What they seek to establish is the national minimum of decent and effective living for all citizens. But the modern State committed to the service of the community and having for its purpose to make it more truly a community must have newer range of functions including a part in the running of the economic system. The State must, therefore, help all those forces that work away from it or against it. So long as the activity of the State has relation to the common life and it promotes the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, informs all the institutions of the national life, it is a relevant activity of the State and it must undertake.

It means that the State should be a direct agent of the economic life of the community. It should endeavour to improve or to doctor the existing economic order and if need be to substitute the economic order itself. The State should so direct its policy that wealth, its sources of production, and its means of distribution shall not be concentrated in the hands of the few, but shall be so distributed as to subserve the common good. It is not necessarily the Socialist State, but, in fact, the modern State which has become a direct sharer in the economic activities. The old self-regulating, self-restoring mechanism has completely failed necessitating the positive intervention of the State in order to restore by whatever measures the social equilibrium.

The intervention of the State manifests itself in many ways. It adjusts its tariff policy to assist nascent, indigenous industries and renders help to those industries in various forms, such as subsidies, loans and technical assistance. To gear up the productive forces, cordial relations are devised to be maintained between the employers and the workers and with a view to improving the health and efficiency of the latter, working of the factories is regulated, hours of work are fixed, conditions of work are prescribed, and the employment of women and children in certain trades and occupations is prevented. In some of the progressive States minimum wages for the workers have been fixed. Machinery for the settlement of industrial disputes exists in most of the States and working of the trade unions, strikes, lock-outs, etc., have been determined by law. Similarly, States intervene and protect the tenants and agricultural labour against exploitation of any kind. It is, now, also conceded that land, the free gift of nature and limited in quantity, should not be left in the absolute control of a small fraction of landlords. The curse of absentee landlordism has prompted some of the States, like India, to fix by law ceilings on the ownership of land and have given the rights of fixity of tenure to the actual tillers of the soil.

The States also undertake the regulation of trade, commerce, money market and credit agencies. Laws are enacted to prevent adulteration of foodstuffs and the sale of harmful drugs. India is experimenting with the

policy of prohibition in some parts of the country. In some cases the State has appeared as a competitor to private enterprise and in others it excludes private enterprise. It owns and runs various social services as the railways, canal, postal, telegraph and telephone systems, electricity, water, transport and even industrial undertakings.

**The Problem of Nationalization.** There are two views of reforming the economic system and they inspire opposite programmes for governmental action. One are those who see no solution of the prevailing economic problem except through the socialization or nationalization of the whole machinery of production. Second are those who believe that governmental action requires a positive intervention of a somewhat drastic character to restore the equilibrium which the capitalist society has grossly disturbed. *Laissez faire* has many items to its credit and from the material standpoint it has contributed enormously to the human well-being. But, at the same time, *laissez faire* has greatly disturbed the orderly run of society, by creating conflicts of interests, by reducing the personal creative activity of workers to mere mechanical occupations, by wasting much of society's resources in unprofitable expenditure and production of little social values, and by producing glaring contrasts between extreme wealth and extreme poverty, where conditions are such that two-thirds of the wealth are owned by an insignificant percentage of the population and the ownership of property is regarded as the badge of a class. This class, which becomes a class of vested interests, mans the political power and directs the whole machinery of government in furthering the interests of its own class alone. The result is the social and political instability, and twenty-three centuries ago Aristotle attributed revolution to "the disproportional increase in any part of the State. When the rich grow numerous, or properties increase, the form of government changes to oligarchy or government of families".

The modern capitalist State is confronted with two other problems of vital importance which characterise the prevailing system of production. The first is the hugeness of the scale of production which involves the hugeness of productive machine in men and equipment, and the extreme complexity and delicacy of the financial organisation on which it rests. Hugeness of the mechanism of production entails rationalization of industry and the emergence of monopolistic organizations. The whole process of this hugeness is pregnant with dangerous results. Hunger for foreign markets necessitates resort to imperialistic policies leading to international hostility and wars. Within the country it means displacement of capital and labour, manipulation of prices to the disadvantage of the consumer, speculation and over-capitalization, and social evils and illegal practices to kill competition.

The second problem is the blindness with which and in which private enterprise works. The capitalist production is largely unorganised, unrelated and purposeless, because private enterprise is haphazard and is prompted by selfish aims and immediate benefits. Each producer works on his own and from his own point of view. What the individual producer does, so does every industry. No industry cares to relate its production to other industries and the total needs of the country as a whole. Each works for its own individual profits and maximisation of profits.

Such an unco-ordinated production results into periodical breakdowns and widespread disorganisation which paralyse the economic life of the nation, causing widespread unemployment and distress.

Just as a man's livelihood is the basic factor of his existence, so the basic factor in any society is, as Tawney puts it, "the way it earns its living". Political activities rest on a foundation of economic activities. They go a long way in determining the nature of the State, by what class of men it will be governed, and in whose interests politics will be run. No State can now afford to remain oblivious of the forces which industrialism has released and the capitalist system has established. The old system of political control has become absolutely irrelevant. The social control of economic forces is the essential need of the modern State. If it does not do its duty, these forces would become so dominant as to destroy the basic unity of society. "Hence the need for new integrations, in which men will feel they are employed in worthwhile occupations and will be able to relate their lives to understood and accepted ways of life."

One way of the new integration is the nationalisation of production on which certain States have entered. By nationalisation is meant the taking over by the State not only the public utility services, like postal, telegraph, telephone, and railway services, but the department of production, hitherto the field of the activities of competing and combining individuals and their establishments. The deliberate intention in nationalisation is to destroy competition and profit motive, which is the *raison d'être* of private enterprise and on which the industry had been built. In Soviet Russia, all land, its natural deposits and principal means of production are owned by the State and operated by the people on behalf of the State. There is absence of exploitation and oppression and, thus, new social relations have been established, not on individual interests but on co-operation and mutual assistance. All are workers and everyone works for himself and for a society composed of workers. There are a few more countries which have followed the Soviet pattern. Others, which have not followed Russia in completely nationalising the whole productive and distributive process, have made a start with some of the key industries with an expanding programme. In these countries in which nationalisation is only partial and exists side by side with free enterprise in other industries, distribution remains free, sometimes within the limits of rationing and price control. The essential feature of such a system is that the State controls the whole output of certain commodities, decides how much shall be produced and of what quality, even fixes the price and determines the scale of consumption. In this way, the State substitutes its decision for the forces of demand and supply.

The policy of nationalisation resorted to by many States within the framework of the capitalist system has been the subject of active political controversy and in many cases the opposition parties are pledged to the reversal of nationalisation. Their main plea is that every extension of State activity means limitation on the freedom of its citizens. This is true. But when the activity of the State is directed in furtherance of the cause of the economically and socially weak it really enhances the freedom of the members of the State as a whole. When the State ventures an enterprise with a view to minimise the inequalities in the distribution



of wealth and frees the society from the parasitic control of absentee capitalism, it does not restrict the freedom of its citizens, but, on the other hand, secures for each citizen those material conditions which will give him the fullest opportunity possible of a full life. When the State does not tolerate an economic system in which men are mere tools sacrificed to profit, it must devise means for a change, and when the community cannot benefit by such a system, it becomes the moral duty of the State, as an organ of society, to substitute it by a system which is more equitable, more just and more stable to promote and foster social unity.

The advocates of private enterprise ignore the important fact that the State with its command of resources and its universal reach can build for the future "in ways that no partial organisation can exert". The State does not discount the future and it suffers from no telescopic defects. It does not exploit the natural resources, limited in quantity and the free gifts of nature, for the gain of the immediate and of the few to the detriment of the future and the many. It can, thus, venture upon many constructive schemes and projects whose benefits will be shared by the future generations and all alike. It really means planning the resources of the nation and planning their utilisation for the wider interest of the society.

Opposed to nationalisation is *laissez faire*. We have already said that there is little room left for the last stand of *laissez faire*. In fact, every modern State undertakes important functions of economic control, and the tendency, stimulated by technological developments and by the enormous growth of economic organizations of every kind, is constantly towards the enlargement and consolidation of these functions. Whenever government exercises control in any direction, may it be with a view to the stabilization of prices or for the conservation of the natural resources and for the development of the economic prosperity of the people, it inevitably affects the whole economy at important points and this necessitates economic planning. Primary resources of the country cannot be safeguarded without a long-term programme and the economic prosperity of the people depends on the proper utilization of the natural resources. The welfare service, therefore, turns into some kind of economic planning. Then, the real issue lies between those who stand for economic planning within the framework of a capitalist society and those who regard this task as impossible under capitalist system and aim to abolish it and substitute by a socialistic order.

**Need for Planning.** Whatever be the system of society no country can afford to do without planning. The necessity for planning is to be found in the inability of a non-planned economy to meet the needs of the modern world. Soviet Russia was the first to experiment with Five-Year Plans and by 1932, the world witnessed a phenomenally rapid industrialization under a most extensive programme of construction and exploitation of natural resources. By the time the Stalin Constitution could become operative in 1936, crises, poverty, unemployment and destitution had disappeared from the Soviet land and Stalin could proudly claim, "it is pleasant and joyful to know that the blood our people shed so plentifully was not shed in vain, that it has produced results." The Constitution guaranteed to the people full economic security. During the

same period capitalist countries with unplanned economies were undergoing a paralysis or, at the least, a temporary breakdown of their system, with proliferation of social diseases, falling prices, unemployment and stagnation both in the economic and political life. In a word, the capitalist countries suffered the bitterest consequences of destitution in plenty. Then, all economies, planned and alike, experienced War "with its insatiable demand for materials and men, and the consequent pressure to conserve and plan". After the War, all had to plan for reconstruction and Russia did it admirably well. In others, the inequalities of wealth and unemployment deepened. In fact, they became intolerable in a professedly democratic society. Security of employment is the dominant demand of our times, and if for no other reason at least for that, there is no escape from some degree or form of planning.

The result is that few countries are without plans today. At one extreme is the Plan of the U.S.S.R. which controls the use of virtually all resources and labour in the country and determines the distribution of resources for different purposes. At the other extreme is the United States which has a plan for achieving and maintaining high levels of employment with minimum government interference. In between are various kinds of planned and semi-planned economies and the Five-Year Plans of India occupy a place of precedence in this category.

**What is Planning?** Planning has no place under pure capitalism, for it does not allow much room for the capitalist trinity—sovereignty of the consumer, the tyranny of the price system, and the quest for profits. In a planned economy, the economic architects, who are the government authorities, generally determine what use is to be made of the limited resources and thereby impair the sovereignty of the consumer, the basic element of capitalist economy. Their targets are determined according to an objective decided and planned by the government and, thus, price and income movements do not regulate the productive process. And since what is to be produced and the quantity and quality of the produce are determined by a board in accordance with the policy of the government, the planned economy supplants the entrepreneur, who is the human magnet in the capitalist machine.

It has been suggested that democratic planning is the only alternative to Communism which is one hundred per cent planning and gears the whole life of man to planned regimentation and it permits no phase of private sector. All decisions about planning are really made by one body, the Presidium of the Central Committee of the Communist Party in the U.S.S.R. and executed by the authority of the Government. The "Gosplan" or the State Planning Commission applies the decisions of the Party Presidium and fills in the details in order to prevent disproportions in the economic development. The plans are not subject to public scrutiny. Only the results achieved and the targets attained may be discussed in the Supreme Soviet. It is the Party Presidium which determines the failures and orders removal of persons from Government who are held responsible for such failures, as in the case of Khrushchev. Democratic planning, on the other hand, "is the lay-out of all national resources in the national interest to a nationally desirable end, and the organisation of the necessary methods, by the use of all the means that

the people in a democratic society are prepared to give to the government". It includes six principal elements: choice of what it is to be produced, the supply of the necessary labour, the supply of materials, the supply of capacity, the supply of the best location, and the supply of finance. If we add to this definition, "the five stages of planning", which Herbert Morrison stated in the British House of Commons, the definition of democratic planning would be complete. The five stages he outlined are: making up one's mind to plan, getting the necessary facts, devising alternative plans, choosing between these and deciding what is to be planned and what is to be left unplanned, and, finally, carrying out the plans, and adjusting and devising so that things happen in the right way and at the right place and at the right time.

**Planning and Freedom.** The most serious doubts concerning the planned economy revolve round the issue of liberty. Is it compatible with freedom? The U.S.S.R. is still to prove that its planned society can co-exist with the other fundamental liberties. The Stalin Constitution grants the right to speech, press and assembly and other civil rights, but they must be consistent and in accordance with the socialist way of life. Vyshinsky makes this point clear. He says, "In our State naturally, there is and can be no place for freedom of speech, press and so on for the foes of socialism." In his discussion in *Full Employment*, Lord Beveridge stressed the compatibility of a planned society and the retention of fundamental freedoms. "Britain," said Herbert Morrison in October, 1946, "is the first great nation to attempt to combine large-scale economic and social planning with a full measure of individual rights and liberty." Planning is not incompatible with freedom. The true background of freedom has always been conformity rather than chaos. But in our search for freedom we rely upon the traditional conformity which the liberal age had inherited from the old community culture of the Middle Ages. Such a concept of freedom is untenable now. Our search for freedom involves a search for a new conformity. And it is "identification with other members of the society, collective responsibility and the necessity for possessing a common background for our attitude and behaviour". This can be achieved within the framework of free parliamentary institutions.

The discussion on planning and freedom can best be summed up in the words of Professor Mannheim. He says, "While planlessness is anarchy and chaos, yet planning must not do violence to the spontaneous forces in society." Free parliamentary institutions provide a fuller scope for the expression of these spontaneous forces. But just as man must learn to live in peace with members of other States if he wants to survive, "so he must learn to reconcile the essentials of his freedom with life in a planned society". The welfare of each is involved in the welfare of all. Freedom must be responsive to the social needs and there must be a careful balancing of social and individual interests.

Our conclusions are now definite. There is no State which pursues the path of pure capitalism. Many of the policies adopted and pursued by the capitalist States are collectivists in their nature and extent. Such policies are not antagonistic to a democratic way of life, for democracy accepts man as a man and thrives on the trinity of liberty, equality and



fraternity. We have enough experience to know that important sectors of the economy can be nationalised without causing any injury to the democratic process. There is also little reason to doubt that collectivism could be introduced into new areas without endangering the democratic system if it secures freedom from want and freedom from fear, the two basic principles of social justice. The measures required to carry such a programme may give to the government important powers over the private sector, but there is no justification to regard them as a dangerous advance on "the road to serfdom" so long as they are responsive to the needs of the community. "The government of the new liberal society," Wilson says, "will be economically and culturally creative." Here democracy joins hands with pragmatic collectivism.

**What the State should not do?** Having conceded that democracy is compatible with some amount of collectivism and that the welfare service turns into some kind of planning and planning is a democratic process responsive to the changing needs or desire of the community, there are certain tasks which the State should not do. If the State does, "it only," as MacIver says, "ruins the material."

(1) **Public Opinion.** Our first obvious conclusion will be that if there is one department of life from which the government is automatically debarred, it is the formation and expression of opinion. In the days of class-bound oligarchies governments did not reign to explain their policies to the people as a whole nor did they generally need to prepare the way for the reception of those policies. Democracy, on the other hand, is built upon the belief that truth comes out by the clash of opinion with opinion, and that every citizen has something of value to contribute and he must not be hindered in bringing it out. "Men who are prevented from thinking as their experience teaches them," says Laski, "will soon cease to think at all. Men who cease to think cease also to be in any genuine sense citizens. The instrument which makes them able to make effective their experience rusts into obsolescence by disuse." Community, no less than the individual concerned, suffers from any attempt on the part of the government to restrict the liberty of the formation and expression of opinion, for without freely thinking persons there is no community.

Moreover, the programmes of legislation in a Welfare State are highly elaborate and technical which involve readjustments. If the government can claim to be a government by consent, it must conduct its operations in full publicity, make itself liable to criticism, and adequately organise institutions of consultation. Such a process provides access to all interests involved to reach the government. The acceptance of governmental policy, even when it issues from the democratic process, often demands the psychological preparation of the public to receive it. It is, accordingly, not only vital that the government should value public opinion, but also provide adequate facilities to organise it and remain amenable to it. The pulpit, the press and the propaganda are the vehicles of the expression of public opinion and their proper organisation is the source of maintaining effective authority. "To maintain the effectiveness of any authority," correctly remarks MacIver, "it is necessary under these conditions that government should utilize modern methods of

feeling the pulse of public, should sense the currents of opinion and adapt their presentation of policy accordingly, should acquire knowledge of the differential impact of new measures on the diverse groups of the community and of the influences and motivations that operate with them." A government which chokes public opinion cannot be a government for the sake of the governed. Regimentation of opinion strangles thought and chokes reason, and the people are just like a herd doing things what they are directed to do. It means government for the sake of the Governors and such a government is not concerned with the public welfare.

But the expression of opinion is not an unbridled democratic right. If the liberty to form and express opinion disturbs social order and is prejudicial to peace and tranquillity, it becomes a duty of the State to restrain it. Orderly conduct of the society is the primary function of the State and the problem of liberty is the reconciliation of individual freedom with the just laws of the State. Liberty is never absolute; it must be under law.

(2) **Religion.** Nor should the government interfere in or prescribe religion. Anything of the soul and of the mind derives its value exclusively from the reason which prompts the action. The religious and ethical appeal is always to the individual's own sense of what is right and what is wrong. Compulsory religion is contradiction in terms. The State should, therefore, refrain from imposing any religious conditions of citizenship or any religious obligations on its citizens, should not grant special establishments, immunities, privileges, or favours to the members of any particular creed, and should not interfere on any religious grounds with the practices of any group of citizens. Barker has correctly said, "The standards of religion can only be applied in the area of voluntary life which lies outside the State; and the quality of behaviour which they involve can only be achieved if it is sought freely and without any shadow of legal compulsion. If the State attempts to draw religious standards, and the quality of behaviours which they involve, into the area of the legal association, and to enforce them as the prescriptions and by the sanctions of law, it simply fails." But the practice of religion is subject to moral considerations. No State can tolerate the preaching and observance of immoral practices in the name of religion or to permit religion to pervert human beings or to corrupt the social life. Similarly, no State can permit religious fanaticism to arouse communal passions to such a frenzy that it may result in the commission of heinous crimes against the adherents of other faiths.

(3) **Morality.** Similarly, it is no more the function of government to impose a moral code than to impose a religious code. The legal code can never be identified with the moral code, as State dictated morality is no morality. T. H. Green stated the truth when he said that "the only acts which the State ought to enjoin or forbid are those of which the doing or not doing, from whatever motive, is necessary to the moral end of society". The moral end of society is the formation of free end of society. Morality is an expression of personality, as it conceives itself in relation to other personalities. A moral rule is a rule a man obeys from his heart, in the light of his system of values. State

prescribed morality instead of making men moral, leads to evasion, hypocrisy, and corruption. "The major thesis is," as MacIver points out, "that law can no more be a substitute for morality than the hand can be a substitute for the eye." It must also be remembered that the moral codes of different groups are inevitably different. In the modern multi-group society State prescribed morality may embitter one group against the other which may ultimately lead to disruption of national unity.

(4) **Customs.** The limits of the State action are again revealed when we turn to customs. What habit is to the individual custom is to the community. Communities, like men, get into the habits of doing things in a given way. Customs grow spontaneously and entrench themselves in the minds of the people. The State has neither the power to make customs nor the power to destroy them, though it may indirectly influence them by changing the conditions out of which they spring. It had long been recognised as a rule of empire that a conquering State must not interfere and seek to change the customs prevailing among a subject people. In democracies the possibilities are generally there to abrogate the customs practised by minority groups. But experience shows that whenever and wherever such an attempt had been made, the minorities have stubbornly resisted the coercion of law, presenting very often disorderly conditions difficult for the government to control and steer through. "Custom, when attacked," beautifully sums up MacIver, "attacks law in turn, attacks not only the particular law which opposes it, but, what is more vital, the spirit of law-abidingness, the unity of the general will."<sup>10</sup>

(5) **Cultural Homogeneity.** Similarly, the State should not provide for cultural homogeneity and perform functions connected thereto as Plato proposed. The cultural heterogeneity of the modern State, the diversity of creeds, opinions and schools of thought professed and practised by its citizens, every State must endeavour to maintain. It should really be the function of the State to guarantee and to safeguard the cultural liberty of its diverse groups. This is essential on intrinsic and political grounds. There should be unity out of diversity and any effort made to destroy it may even imperil the national unity which homogeneity may aim to establish.

(6) **Fashions.** Nor should the State prescribe fashions. A King may set a fashion for others to follow, but not by prescribing it. "A people will eagerly follow the dictates of fashion proclaimed by some unknown coterie in Paris or London or New York, but were the State to decree changes in themselves so insignificant, it would be regarded as monstrous tyranny—it might even lead to tyranny." Fashion is a matter of personal choice and preference. It is not a matter of imposition. But when fashion, such as scantiness of dress, offends the accepted norms of social decency and injures the susceptibilities of the people, the State may intervene in the interest of public morality and purity of social life.



## SUGGESTED READINGS.

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|--|---|
| Allen, C.K.                                    | : <i>Democracy and the Individual.</i>                        |
| Coker, F.W.                                    | : <i>Recent Political Thought</i> , Chapter XIV.              |
| Ehrmann, H.W.                                  | : <i>Democracy in a Changing Society.</i>                     |
| Garner, J.W.                                   | : <i>Political Science and Government</i> , Ch. XVII.         |
| Gettell, R.G.                                  | : <i>Political Science</i> , Chap. XXI.                       |
| Laski, H.J.                                    | : <i>Grammar of Politics</i> , pp. 25-43.                     |
| Laski, H.J.                                    | : <i>Liberty in the Modern State.</i>                         |
| MacIver, R.M.                                  | : <i>The Modern State</i> , Chaps. V, IX, XV, XVI.            |
| Paul, W.                                       | : <i>The State in Origin and Function.</i>                    |
| Roehe, John P., and Murray,<br>S. Stedman, Jr. | : <i>The Dynamics of Democratic Government</i> ,<br>Chap. 12. |
| Sidgwick, H.                                   | : <i>The Elements of Politics</i> , Chaps. III-IV.            |
| Soltan, R.H.                                   | : <i>An Introduction to Politics</i> , Chap. XIII.            |
| Titmuss, Richard, M.                           | : <i>The Economic Functions of the State.</i>                 |
| Warbasse, J.P.                                 | : <i>Co-operative Democracy.</i>                              |
| Willoughby, W.W.                               | : <i>The Ethical Basis of Political Authority.</i>            |

## Theories of the Sphere of State Activity

**Theories, Old and New.** We discussed in the last Chapter the limits of political control and demarcated the functions which the State should and should not do. The sphere of State activity all through the ages has been influenced by many factors including the environmental conditions and circumstances, social, economic and political needs of the people and their attitude towards the State. In this and in the following chapters we discuss some of the important theories, old and new, regarding the sphere of State activity. All these theories tell us about the relation of the State to the individual, and the extent to which it should restrict the freedom of individual action in order to promote general welfare. On the one extreme is the Idealist or the Absolutist theory of the State. There is no sphere of human activity including man's thought and conscience, where the State, according to the advocates of this theory, does not step in. On the other end is the theory of Anarchism which seeks to establish a stateless society. There are various other theories which aim at reconstructing the existing social order, but all of them are the product of socialistic ideas and, therefore, emphasise the importance of economic interests in the State. Some of these theories minimise the role of the State and advocate decentralisation, while others magnify the State and make it a highly centralised unity of control.

### IDEALISM

The Idealist Theory of the State, variously known as the philosophical, metaphysical or the absolute theory, forms an integral part of the traditional philosophical idealism which, until quite recently, exercised a dominating influence in the German and British political thought. It is 'Metaphysical' because the States, the Idealist describes, is more of an idea than the actual State in the ordinary sense of the word. A better description of it is the absolute theory. The doctrines underlying the theory or what purport to be its doctrines have been said to provide the foundation of many totalitarian or reactionary systems of government. Originally, the theory is the product of the teachings of Plato and Aristotle, but in its modern typical form it was expounded by the German philosopher, Hegel. In Britain, the Idealist theory was made popular by T. H. Green who drew his inspiration from Kant and Hegel as well as from Plato and Aristotle. Its most complete statement, however, is found in Dr. Bosanquet's book, *The Philosophical Theory of the State*.

**Origin of the Absolutist Theory.** The Idealist theory of the State is derived from two different sources which find prominent place in Greek thought. Plato and Aristotle, in the first place, never differentiated between the State and society. They regarded the State as a self-sufficing entity identical with the whole of society existing for itself and by itself. The only relation which subsisted between one State and another was of indifference or hostility. As the State represented and contained within itself all the individual's aspirations and fulfilled all his social needs, it was an ethical institution. The true State was a "partnership in a life of virtue". Secondly, Plato and Aristotle started with the premise that man is by nature a social animal. He cannot live a life of isolation unless, of course, he is god or a beast. It is only by living in society that a man can develop his personality and realise all that is best in him. Apart from society he is nothing and has no significance. Society alone provides him with all what he needs, and consequently makes him happy and virtuous; in the proverbial words of Aristotle, "The State comes into being for the sake of life, and it continues to exist for the sake of good life." The State is, thus, an unavoidable necessity, for it raises man's moral stature and accounts for his happiness.

**Statement of the Theory.** From this bare truth about human nature and the sound doctrine that the end of the State is social morality, modern Idealists developed a philosophy which magnified the State into a self-sufficing entity. They considered the State as an organic unity and held it as the highest expression of social morality. Since the State is a moral organism, every individual is its inseparable part and he depends for his existence upon it. In addition to the obvious benefits of security against violence and redress against injustice that the individual receives from the State, he owes it a debt of gratitude for granting him all those moral conditions which enrich his personality and develop his faculties to their full stature. In sum, the State exists to create and maintain those conditions in which free and moral life is possible. It is "the reality", as Hegel says, "of the ethical spirit". It is the divine idea that exists on earth, the march of God on earth. By this conception the State is able to convert into duties to itself whatever rights may seem to belong to individuals. "This substantive unity (of the State) is its own motive and absolute end. This end has the highest right over the individual, whose highest duty is in turn to be a member of the State." The orders of the State have a moral sanction as they come from a moral leviathan. As the State is omnipotent, infallible, omniscient, absolute, just and the guardian of morality, its claims on citizens are prior and are based on an absolute authority.

In this way the modern Idealists idolize the State and glorify it to the point of edification. They regard the State as a vehicle of all individual development and progress. The individual apart from society has no meaning. He has no natural rights. Rights flow to him because he is a creature of society and the State is the creator and guarantor of those rights. It guarantees rights by creating conditions necessary for the full moral development of individual's personality. The State is, thus, made the source as well as the guardian of the social good. Its authority is unlimited and its competence unrestricted. The Idealists, as



such, place the State "upon a pedestal at the foot of which its members are expected to bow down and worship it." They teach that the State can do no wrong and its laws can never be unjust. Its authority must be obeyed without demur and resistance to its commands or revolt against its authority, however oppressive, is wicked and iniquitous. The German political philosophers carried to the extreme the claims of the State and asserted that the State is power, "therefore fall down and worship it." War, they said, is necessary to increase the power of the State and there is nothing which should limit its expansion.

**Hegel's Philosophy.** In developing his theory Hegel, the renowned Professor of Philosophy in Germany and whom many have hailed as the outstanding philosopher of the nineteenth century, starts from Rousseau's conception of moral freedom as the peculiar and distinctive quality of man, and considers the State entirely in its relation to this freedom. Freedom, he holds, must be positive and objective or outwardly expressed. The freedom which exists in and is a product of society is active and developing. It expresses itself in a series of outward manifestations—first in law, secondly, in the rules of inward morality, and, finally, in the whole system of social institutions and influences that make for the development of personality. The State, according to Hegel, makes possible the conditions for freedom and men enjoy real freedom only by living in it; without it they are completely in subjection. Freedom, he adds, is the outstanding characteristic of the modern State. He criticised the Greeks, because they did not recognise that the State must rest on respect for personality. Their acceptance of slavery was a proof of their failure here.

What does Hegel mean by freedom? The development of the spirit, according to Hegel, is the development of freedom and the history of mankind is the history of freedom. History culminates in the State in which the spirit finds its final embodiment; "nothing short of the State is the actualization of freedom." Man, thus, finds his freedom within the State and by reason of his identity with it. It is only the State that can command the individual to do the rational thing constituting his true freedom. The State transcends the individual and absorbs his moral being, but this is only in order that the individual's freedom shall be rational. In brief, the State is man in his fulness and perfection of development. Hegel gives to the State, in this way, a real personality and a real will and the will of the State he names the general will.

Hegel's general will is not the sum total of individual wills. The State is an entity over and apart from the people who compose it. It is a new personality and "it is in the General Will and in the personality of the State that the will and personality of each individual are made to transcend themselves". It follows, then, that the actions of the State in so far as they proceed from the general will cannot be wrong and unjust. There is no higher rationality than the State. No one may disobey its commands. The commands of the State give man his only opportunity to find freedom, and when he obeys the dictates of the State he really obeys his own real will.

The State, Hegel said, "must be comprehended as an organism". It

is a natural growth and, thus, a whole. The whole is greater than the parts, because parts are intrinsically related to the whole and they have meaning only in so far as the whole gives them meaning. It is an end in itself. "In this end," he says, "freedom attains its highest right. This end has the highest right over the individual, whose highest duty in turn is to be a member of the State." So the State is "the march of God in the world; its ground or cause is the power of reason realizing itself as will. When thinking of the idea of the State, we must not have in mind any particular State, or particular institution, but must rather contemplate the Idea, this actual God, by itself."

Hegel's State is, therefore, supreme and sovereign. It has the right of absolute decision and no one can question such a decision. Hegel allowed no place for individual freedom against the State. In his system the inalienable rights of man as an individual "were utterly obliterated". Since man finds his freedom within the State and by reason of his identity with it, social freedom, freedom through the State was Hegel's ideal. Men do not, he insisted, value individual freedom as highly as has been supposed. What they actually want is real freedom and this they can have only through the State. "The State restrains and represses, but in so doing it enlarges the freedom of society as a whole and, thus, enlarges the liberty of the individual." The State must, accordingly, be regarded "as the ethical whole and the actualization of freedom."

Hegel's conclusions complete the whole doctrine of the Absolutist theory of the State. The State, to Hegel, in the words of Dr. Garner, "is a 'God State', incapable of doing wrong, infallible, omnipotent, and entitled to every sacrifice which its interests may require of the individual. By virtue of its transcendent character and of the sacrifice and devotion which it has a right to demand, it elevates and ennoble the individual, whose tendency is to become selfish and self-centred and carries him back into the life of the universal substance." He exalted the State to a mystical height and at all times, particularly during war, the State may lawfully exercise complete authority over its citizens. In an emergency, it may do what it pleased to choose; and as to what constituted an emergency it is for the State to decide. It may even ask its citizens to place their lives at its disposal. The Absolutist theory of the State finds its complete expression in the omnipotence of the State in time of war. Hegel himself says that "the state of war shows the omnipotence of the State in its individuality".

But Hegel regards war as an evil, though not an absolute evil. He justifies war because it illustrated the "movement of God in history" and the way in which supreme power passes from one nation to another. His justification of war is due to his deep veneration for the nation-State. He does not believe in the brotherhood of nations because, in his opinion, the essential principle of the nation-State is struggle. Hegel, thus, paved a way for his recent disciples in Germany and Italy to preach and practise " Militarism and even brutalism".

Hegel's idea of the State may, thus, be summed up:

1. Garner, *op. citd.*, p. 232.

(1) The State is the divine idea as it exists on earth; it is the march of God in the world.

(2) The State is an end in itself. It is not only the highest expression to which the spirit has yet attained, it is "the final embodiment of spirit on earth". There can be no spiritual evaluation beyond the State.

(3) The State is an organism. It is a whole which is far greater than the parts which compose it, and have significance only in it. Individuals must, therefore, be completely subordinated to the State.

(4) The State is unchecked by any moral law. It itself is the creator of morality.

(5) Whatever the State does is right. It can never be wrong and unjust. It is only in the State that man can find his freedom. When the individual obeys the commands of the State, he actually obeys himself.

(6) The State being omnipotent and absolute, the will of the State cannot be bound by international law. Its own welfare is the highest law.

(7) War is an evil, but not an absolute evil. He justified war as a virtuous activity since it preserved the ethical health of the people in their indifference to the stabilisation of infinite institutions.

(8) As the State is the march of God on earth, to obey the State is to obey God. And as the authority of God is unlimited, unrestricted and absolute, so is that of the State.

**Green's Philosophy.** In England, T. H. Green developed his political philosophy after 1870. Although his name is intimately associated with the Absolutist theory of the State, yet he departs from Hegel's view in many respects. Green believed in the international morality which Hegel too readily dismissed. He taught that the power of the State was limited within and without and that the life of the nation has no real existence except as the life of the individuals composing the nation. He said that war was the attribute of the imperfect State and it could at most be relatively right and never absolutely right. The State, for Green, is the product of reason which tells man of moral freedom as his essential quality. Human consciousness postulates liberty, liberty involves rights and rights demand the State. Thus, the State is meant to create those opportunities which are so necessary to the full moral development of individuals. The sovereign power which maintains rights is not based on mere force. Will, not force is the basis of the State, for behind the actual sovereign is the common conviction of a common good, the General Will. Green's General Will is very much different from Hegel's General Will. He calls it "the common consciousness of a common good"; "a sense of possessing common interests, a desire for common interests on the part of the people". It will be obvious that Green's General Will, as Wayper says, "is the will for the State, not the will of the State". It, therefore, leaves no margin for the rulers to preach and practise militarism and brutalism in the name of the will of the State as Hegel's disciples preached and practised.

Rights, according to Green, are the outer conditions necessary for man's inner development. The supreme right of every rational person is



the right to become what a man should be. Natural rights have no other significance for Green except that they help a man to become a moral and ideal human being dedicated to himself and the society of which he is a member. Having said so much Green becomes Hegelian in his conclusions. Green believed that without the State man is not man at all. It is only in the State that he can fully express himself, and his nature can develop to its full capacity. Hence he must look to the State not as a necessary evil which is the result of his viciousness, but as a natural and ethical necessity which is the result of his own inherent virtue. The political life of a man, Green concludes, "is a revelation of the Divine Idea".

There was a realisation in Green of the majesty and might of the State. Rights, according to Green, exist because of society, and of a society in which some common good is recognized. Every right is, thus, derived from some social relation. Though the State does not create rights, yet it may still be true to say that the members of the State derive their rights from the State. "The State is the complex of social relations out of which rights arise, so far as those rights have come to be regulated and harmonized according to a general law." Green concedes the right of resistance to the authority of the State and here he essentially differs from Hegel, but he makes the path of resistance so difficult that ultimately it may be considered as a denial of the right. He is emphatic that resistance can never be justified merely because legislation runs against personal inclinations. He warns men that in resisting the authority of the State they must not forget that they will probably be wrong and the State almost certainly right, for "the State will be speaking with the wisdom of the ages, and men". He repeatedly reminds the resisters that they must not forget that resistance may lead to disastrous results, "since it may tempt men to unleash the bonds of that might demon Anarchy". He commands them, wherever constitutional system of government exists, to put up with the undesired laws until they are repealed by constitutional means. Where the constitutional government does not exist, men should feel justified to resist the authority of the State when certain conditions obtain. But it still requires serious thought and consideration before it is resorted to. "We must not sacrifice," says Green, "what is almost the whole for the sake of a part; we must not risk social chaos, and the disturbance of the existing system of rights, for the sake of adding a new element of the system."

Like Hegel, Green is very much concerned with the problem of freedom. Freedom, Green says, does not consist in being left alone to do what one likes. It all depends on what one likes to do. Man is free only when he is following his "true" good and his "true" good is also "social" good, because individual good can only be achieved when the good of others is also realised. Freedom, then, Green says, "is a positive power or capacity of doing or enjoying something worth doing or enjoying and that, too, something we do or enjoy in common with others". Freedom is, therefore, positive and it is of doing something worth doing, and that, too, in common with others. Freedom for Green was not unlimited. The conclusion is obvious. True liberty, according to Green, can only be realised in the State. For both, Hegel and Green, man is

most free when he identifies himself with the State. Hegel emphasises individual's complete identification with 'Divine Spirit' and the "Divine Spirit" finds its embodiment in the State. For Green, the State is a natural and ethical necessity which is the result of man's own inherent virtue.

But Green never regards the State as an end itself. It is a means to an end, and the end is the full moral development of the individuals who compose it. He emphasises the importance and worth of every man and stands for the maintenance of his dignity and will consequently forbid his exploitation for any purpose whatever. "The life of the nation," he so very often repeats, "has no real existence except as the life of the individuals composing it." He unequivocally adds, "To speak of any progress or improvement or development of a nation or society or mankind except as relative to some great worth of persons is to use words without meaning." Green, thus, does not make the State absolute and omnipotent. It is limited from within and without. The State and its laws deal only with the external actions of man. They have nothing to do with his intentions and motives. The State cannot make men moral. It is to remove the obstacles which prevent men from becoming moral. Morality consists, according to Green, in "the disinterested performance of self-imposed duties". The functions of the State are, accordingly, negative and not positive.

At the same time, Green is not completely an Individualist, for in order to remove obstacles the functions of the State become positive in content. For example, Green holds the State responsible to see that the mental and physical malnutrition are removed. Hence it should make education compulsory, do away with chances of intemperance by checking the growth of liquor shops, and forbid reckless beggary by providing certain pursuits which people may take up. "To uphold the sanctity of contract," he says, "is doubtless a prime business of government, but it is no less its business to provide against contracts being made which from the helplessness of one of the parties to them, instead of being security for freedom, become an instrument of disguised oppression." Paradoxical as it is, Green justifies the existence of capital, but he is against the continuance of the institution of landed property. Green stands for the happiness of man so that everyone should contribute something to the common good and to attain the both, he justifies the intervention of the State. Here the functions of the State become positive. He considers that the punishment for those who violated laws should be proportionate and reformatory in order to create conditions which make moral life possible.

Green's State is a community of communities and its supremacy over all is unquestioned. Here he resembles with Hegel. But there is a significant difference between them. For Green associations are important, because they are prior to the State and they have their own system of rights which arises from their very nature. The State must be supreme over them, because it must co-ordinate and adjust them. But it must also preserve them. "A State," he says, "presupposes other forms of community, with the rights that arise out of them, and only exists as

sustaining, securing and competing them." The difference between Hegel and Green with regard to the supremacy of the State over associations has been most accurately explained by Wayper. He says, "Thus, while for Hegel if associations do not result in the State, they are no true associations; for Green if the State does not preserve associations, it is no true State. In both Hegel and Green the fact of the State's supremacy is unquestioned. But in the one the exercise of the supremacy of the State is unlimited because of its own nature and the nature of associations. In the other the exercise of the State's supremacy is limited by its own nature and the nature of associations."

If Green's State must preserve the rights of the various associations within it, it must respect the rights of the community of humanity outside it. Unlike Hegel, but like Kant, Green believes in a universal brotherhood of men. An international code, he believes, is the obvious extension of ethical system accepted within the State. "Both spring from a common source—man's desire as a moral being to fulfil himself." He condemns war as it violates the right of man to free life. It may be justified only as a "cruel necessity"—one wrong to correct another previous wrong.

Green, it will appear, is more near Kant than Hegel. In his views on individual freedom, war and international morality, he is more Kantian than Hegelian. According to Green, the State is neither absolute nor omnipotent. He is Hegelian inasmuch as he emphasises the moral value of the majesty of the State.

**Bernard Bosanquet** (1848-1923). Dr. Bosanquet held the chair of Moral Philosophy at the St. Andrews University of Scotland. While at Oxford, Bosanquet came under the influence of Green and Jowett. Hobhouse described him as the most modern and the most faithful exponent of Hegel. This is no exaggeration. But it would be more apt to say that Bosanquet began in the ways of Rousseau and Green and ended almost in those of Hegel. His *Philosophical Theory of the State* is, in a sense, regarded as a definitive statement of Hegelianism for English-speaking people.

Bosanquet is a strong defender of the general-will theory. He starts with the conception of a free moral will as expounded by Rousseau and comes to the Hegelian thesis that the part finds significance through the whole; and that the finite is necessarily only a part of the absolute. He adopts the Hegelian view of the State as the sublimation of all virtue and authority, arguing that the "State may legitimately do whatever is required for the preservation and improvement of the organised life of the community, and is the sole judge of what is so required". The individual, Bosanquet holds, is related to the State as the idea in a man's mind is related to that mind.

There are three stages in the exposition of Bosanquet's doctrine of will: distinction between the actual will of the individual and his real will; distinction between the real will of the individual and the general will of society; and the State as the supreme expression of the general will. Actual will, he says, is the constant will of man, that is, his will when he acts from moment to moment as a conscious individual. But



this will is created and amended by the considerations of what he wants at all other moments and adjusts to the will of others, it becomes the real will. The real will of the individual is bound up with the wills of other individuals with whom he lives in society and it becomes the general will. Man alone is nothing and his fulfilment cannot be achieved apart from the general will. The State is the perfect embodiment of the general will because for the common life society depends upon the relationships which the State maintains. "By the State, then, we mean," writes Bosanquet, "Society as a unit, recognised as rightly exercising control over its members through absolute physical power...."

But the State as a political organisation using force is the narrow sense in which Bosanquet defines the State. His State is the supreme community, the guardian of morality and, consequently, the supreme ethical institution. It is synonymous with society and represents the synthesis of life. "The Nation State....," says Bosanquet, "is the widest organisation which has the common experience necessary to found a common life." The State promotes common life which is a moral life and what it directs is always moral. But Bosanquet is near to Green regarding the nature and the sphere of State action. Both believe that the State is an ethical institution and both agree that the State cannot be used directly to promote morality. "Art, philosophy and religion," says Bosanquet, "though in a sense the very life blood of society, are not and could not be directly fashioned to meet the needs and uses of the multitude, and their aim is not in that sense social." Having said so, Bosanquet further says, "It (the State) has no determinate function in a larger community, but is itself the supreme community; the guardian of a whole moral world, but not a factor within an organised moral world. Moral relations presuppose an organized life; but such a life is only within the State, not in relation between the State and other communities." The immoral acts of the agent of the State, therefore, cannot be ascribed to the State. But the distinction between the acts of the State and the acts of its agents is unreal. Government is, no doubt, the agency of the State, but the State is abstract whereas government is concrete, a reality. The acts of government are really the acts of the State. Professor Barker logically sums up the whole issue when he says, "If a citizen can treat his own State as legally responsible for damages, it is difficult to see why a State, which can undergo legal responsibility, should not also undergo moral responsibility, if there is anybody of moral opinion to affix responsibility." Bosanquet's State not responsible for the acts of its agents could be irresponsible and tyrannical particularly when he does not differentiate between the State and society. And more so, Bosanquet does not permit the individual the right of rebellion against the authority of the State.

**Evaluation of the Idealist Theory.** Idealism, as opposed to realism, stands for the political theory which deals with the relations of the individual and the State as it ought to be and not as it is. But the Idealists idealised the real. The present to them came to be equal to the future and the existing nature of the State and society they accepted as what it ought to be. The result was that instead of becoming a source of reform or radicalism, idealism became a conservative creed standing for

the *status quo* in civilisation. For example, Aristotle idealises slavery; Hegel glorifies war; and Green reconciles private ownership of capital with his plea for nationalisation of land. Hobson describes Idealism as "the tactics of conservatism", because "it preached the divine right of things as they are."

The assumption of the identity of the State and society on which the Idealist theory is based is obviously false. We carefully distinguish the State from society. Once this distinction is realised the Hegelian concept of the State is rejected. Similarly, the contention that the State is above the principles of morality and that it is the State which prescribes morality is untrue. Morality is a subject of conscience and MacIver states a bare truth that State-dictated morality is no morality. No moral prescriptions of the State have any effect upon conscience unless they appeal to man himself.

The Idealist theory attributes to the State a personality of its own which transcends the personalities of those who compose it. This doctrine has been rejected as absurd. Duguit and MacIver consider it fanciful as it teaches the omnipotence, absolutism, and divinity of the State. It sacrifices freedom of the individual by subordinating him to the all-embracing power of the State. Unlimited power of the State dwarfs the personality of the individual and makes him and the society the poorer for it. It is true that man can develop his personality only while living in the State, but admission of this fact does not necessarily mean the omnipotence of the State. The State being an agent of society is a means to an end and not an end in itself. It exists for the welfare of man; man does not exist for it and its glorification. Nor is there any truth in the distinction of the real will and the unreal will. "It is only a device for giving an appearance of justice and democracy to what must otherwise appear purely arbitrary and tyrannical acts of sovereign State." Referring to the Hegelian glorification of the State, Professor Hobhouse says, "The State is a great organisation. Its well-being is something of larger and more permanent import than that of any single citizen. Its scope is vast. Its service calls for the extreme of loyalty and self-sacrifice. All this is true. Yet when the State is set up as an entity superior and indifferent to component individuals, it becomes a false god, and its worship the abomination or desolation, as seen at Ypres or on the Somme."

The Idealist theory, as such, has been "denounced as unsound in theory, untrue to fact, and liable to extend a dangerous sanction to the more unscrupulous actions of existing States in the sphere of foreign policy". Hitler and Mussolini blindly followed Hegel with disastrous consequences to humanity. And the Absolutist theory produced such a bias against the State that in many quarters even its necessity was questioned.

### UTILITARIANISM

**Origin of Utilitarianism.** In England the early part of the nineteenth century is marked by the growing ascendancy of that type of thought to which Hegel had been violently opposed. Its theoretical basis is the psychological individualism of the previous age and it is essentially associated with Jeremy Bentham. But it is hardly consistent with facts that

it began with Bentham. The founder of Utilitarianism was David Hume and it was professed by Priestly, Hutcheson and Poley, though its origin was from Helvetius and Baccaira. Hume opposed the rationalistic school and their philosophy based on the conception of the law of nature. Morality, he asserted, was based on expediency and utility was the touchstone of all institutions. Reason, he thought, was an inert principle and passions, arising from a sense of pleasure, motivate the actions of men. With this spring of knowledge, Hutcheson, for the first time, used the formula of the greatest happiness of the greatest number, upon which Bentham's utilitarianism hinges. Bentham also borrowed some of his ideas from Joseph Priestley. But to Bentham goes the credit to give a systematic exposition of Utilitarianism and made widely known and admired the conceptions which are its characteristics.

**Utilitarianism Explained.** Utilitarianism is not a cult based on the abstract principles of Idealism of the eighteenth century. For an absolute Idealism it sought to substitute an absolute empiricism. It is based on the realities of human life and is essentially practical judging everything from its practical utility. It aims to use the ascertained facts of life in such a way as to promote the progress and advancement of society and make life really worth living. It joins and blends the happiness of the individual with the happiness of others with whom he leads a life of togetherness. It does not separate the individual from the society and the individual good from the social good. Utilitarianism, accordingly, discards the *laissez faire* theory of State action. It stands for promoting the happiness of the people, both individual and social, in order to obtain the greatest good of the greatest number. It enjoins on the legislators to devise and pass such laws that increase the pleasure of the people and lessen their sorrows and pains. The State, for the Utilitarians, is a human necessity for the promotion of general welfare.

Utilitarianism is hedonistic. Hedonism is the doctrine which establishes that every man seeks pleasure and avoids pain. This doctrine of pleasure versus pain goes back to the Greek times and finds its expression in the teachings of Epicurus. But there is a difference between the Greek Hedonism and the Utilitarian Hedonism. The former is egoistic, self-conceited, whereas the latter is altruistic, regardless of others. The Epicureans made happiness the sole aim of life and told the people to judge everything from the standpoint of their happiness alone. Utilitarianism seeks the happiness of the individual by securing the greatest happiness of the greatest number. Both accept pleasure as the ultimate end of the individual, but to the Utilitarians pleasure must add to his moral stature and the actions of the State should be so directed as to keep that end in view. Utilitarianism has, thus, an ethical appeal.

The individual's happiness cannot be isolated from the happiness of others with whom he lives in society. While living along with others two impulses influence his conduct: **self-regarding** and **other-regarding** impulses. "If the emotional satisfaction of impulses is a powerful factor in human conduct, so is reason which compels a man to be other-regarding." Reason, therefore, is the basic factor in the life of togetherness and it is reason which helps man to reconcile his self-regarding with his other-regarding impulses. This reconciliation creates bonds of affinity



which are the bonds of altruism and welds them with the sense of human affection. This philosophy of Utilitarianism is also described as the philosophy of "enlightened benevolence". The light of reason creates the spirit of benevolence joining the self with others producing the conditions of the greatest happiness of the greatest number.

The Utilitarians were the opponents of tyranny and injustice and the champions of individual freedom and happiness. They had no sanctity of the existing political institutions if they failed to realize them. Their criterion of every action of the State was utility and, to a Utilitarian, it meant the greatest happiness of the greatest number. Utility was welfare and it embraced all that determined and constituted man's happiness. It was the only standard of right or wrong, good or bad. "Political institutions and public policies," as Maxey observes, "were not to be rated as good or bad relative to some visionary, and always arbitrary, conjecture of human rights and obligations, but more or less beneficial according to some fixed standard of utility in human affairs. By their fruits, not by their ideality, should they be judged". The standard of utility was the happiness and satisfaction which the individual enjoyed from the exercise of public authority. Such a happiness and satisfaction of the individual produced results of general welfare and it meant the greatest happiness of the greatest number. The Utilitarians rejected the dogma of natural rights. Bentham regarded natural rights as "simple nonsense, natural and imprescriptible rights, rhetorical nonsense upon stilts."

**Jeremy Bentham** (1748-1832). Jeremy Bentham was the founder of the Utilitarian school of thought. Though he had been characterised as "one of the oddest figures in the history of political thought", yet he was held in high esteem and regarded as the "foremost apostle of the practical," and his ideas tremendously influenced the policies of the government. He was essentially a reformer who was out to reform English law along more rational lines. But experience had made it clear to him that before this had much chance of being accomplished, he should first undertake the task of reforming the existing political institutions and get rid of the "sinister interests", which stood out against reform and were hostile to general welfare. He had no respect for antiquities, and he had no reliance on the age long institutions. The law and the institutions, he maintained, must represent the needs of the day and be judged from the point of view of their present utility.

According to Bentham, pleasure or the avoidance of pain is the sole end of man and the sole content of human good. This is how he explains: "Nature has placed man under the government of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do.... They govern us in all we do, in all we say, in all we think.... We owe to them all our ideas, we refer to them all our judgments, and all the determinations of our life." Bentham gives a list of fourteen pleasures and twelve simple pains. From his concept of pleasure and pain, he propounds the principle of **utility** like this, "By this principle of utility is meant that principle which approves and disapproves of every action whatsoever, according to the tendency it appears to have to augment or diminish the happiness of

the party whose interest is in question or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever, and therefore not only of every action of a private individual, but of every measure of government."

With this principle he comes to the conclusion that an action is right or wrong, sound or unsound as it brings pleasure or pain and it is from this standard that the values and laws are to be determined. The greatest happiness of the greatest number is, thus, the social test of what is morally defensible in conduct, and the true method of evaluating is a "felicific calculus". According to Bentham, pleasure or pain could be arithmetically calculated by taking into account the seven factors of intensity, duration, certainty or uncertainty, propinquity or remoteness, fecundity (the chance of its being followed by sensations of the same kind), purity and extent. The value of a pleasure could be found either by multiplying or adding to various factors. The task of the legislator was simply to "sum up all the values of all the pleasures on the one side, and those of all the pains on the other. The balance, if it be on the side of pleasure, will give the good tendency of the act upon the whole, with respect to the interest of that individual person; if on the side of pain, the bad tendency of it upon the whole. . . ." One of the seven factors for the measurement of pleasure or pain was "extent", that is, the number of persons affected. The value of a thing was more or less according to the number of persons taking part in a pleasure or pain.

Bentham had no faith in the Social Contract theory of the State. Political society and rights and duties of the State, he believed, did not flow from the consent of the people, as the Contractualists had professed. The ultimate reason for men submitting to political authority, he asserted, was the present utility. "The business of government," he affirmed, "is to promote the happiness of the society, by punishing and rewarding." It had no other justification for existence. The test of a good government is how it rewards and punishes. If the government does not employ effective means to promote happiness of society "it nullifies its very title to authority". People obey law because it aims at four ends: security, substance, abundance and equality. It is the general habit to obedience, born of utility, that gives a law its permanence and makes it effective thereby promoting the greatest happiness of the greatest number. Bentham believed neither in natural law nor natural rights. Rights, he asserted, are created by law.

The very basis of utility implies limits upon the power of government. Government has the authority to act to produce the greatest happiness of the greatest number; it may legitimately do nothing else. Moreover, in many instances the action of individuals may voluntarily be directed to this end, and here government ought not to interfere. Bentham also said in the *Fragment on Government* that men should be informed by government with respect to what is being done and why. They have a right to know and a right to protest and oppose. In addition, government ought to be responsible, and the only way to see that it exercises responsibility is to have a system that facilitates the "frequent and easy" interchange of position of Governors and governed. Bentham was, thus, out to remove the distinction between the governors and governed and this he

would do by investing sovereignty in the people themselves. A pure democracy in modern times, he considered, is impossible. But by letting people choose their representatives, and then by binding their representatives so closely as to give them no opportunity to betray their masters, an approximate identity of interest can be secured. The political idea of the Utilitarians, therefore, lay, first in the direction of extending suffrage, and then in originating devices that should subject representatives as strictly as possible to popular control.

**John Stuart Mill** (1806-1873). Bentham had a long list of prominent disciples and the foremost of them was John Stuart Mill. John Mill, in fact, is the most influential philosopher belonging to the middle period of the nineteenth century. He is very often described as the last of the Utilitarians and the foremost of the Individualists. This is true to a great extent, because he considerably modified Bentham's thesis of pleasure versus pain by admitting and emphasising a qualitative aspect of pleasure, and became an ardent defender of liberty. He agrees with Bentham that the happiness, or the greatest good of the greatest number, is the highest good and the criterion of morality, but Mill's calculus of pain and pleasure is different. Mill teaches that pleasures also differ in quality, that those which go with the exercise of intellectual capacities are higher, better than sensuous pleasures, and that persons who have experienced both prefer the higher pleasures. "No intelligent person would consent to be a fool; no instructed person would be ignorant." No person of feeling or conscience, he asserted, would exchange his lot for that of a fool, dunce or rascal, even if he was convinced that a fool, dunce or rascal is better satisfied with his lot than a man of conscience with his. "It is better to be a human being, dissatisfied," says Mill, "than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied."

Bentham and Mill also agree that we ought to strive for the greatest happiness of the greatest number. But Bentham justifies it on the ground of self-interest, while Mill bases it on the social feelings of mankind, the desire for unity with our fellow creatures. He tells us that Utilitarianism requires a man to be as strictly impartial between his own happiness and that of others as if he were a disinterested and benevolent spectator. "In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as one would be done by, and to love one's neighbour as oneself, constitute the ideal perfection of Utilitarian morality." Indeed, the greatest happiness principle is meaningless and without rational significance, unless one person's happiness is of exactly as much importance as another's. "Bentham's principle of utility," observes Maxey, "in a society of wolves would exalt wolfishness; in a society of saints it would exalt saintliness. Mill was determined that saintliness should be the criterion of utility in any society whatsoever."

Mill regarded social well-being as inevitably bound up with individual well-being. He pointed out "the importance, to man and society, of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions". He rejected the doctrine of expediency as the paramount factor in determining the proper course of the action for the State. He



insisted that there were various kinds and gradations of utility and among them "certain social utilities" were more important and absolutely imperative. And liberty, he considered, was one of this kind. The older Utilitarians had not ranked liberty so high in their scale of values.

Mill regarded individual liberty as the supreme possession of man and would permit governmental interference to the minimum. He would allow the individual to develop himself on his own line and liberty, for him, included the freedom of thought and expression, freedom of conscience and association. But he would impose two limitations on individual liberty: (1) the individual was not free to do harm to others, and (2) he must share labours and sacrifices to secure the society and individuals against harm. Accordingly, he laid down a concise test of the functions of the State. His general proposition was that the State should not interfere with those acts which affected the individual alone, but the State may act in the interest of the general welfare when the acts of the individual affect others as well as himself.

He had an unflinching faith in the representative form of government, for it is the best schooling in citizenship. The first element of a good government, according to John Mill, is "the promotion of the virtue and intelligence of the people." And the government which promotes and fosters moral and intellectual qualities is, to him, the best. To make the government really representative, he vigorously advocated for proportional representation and women suffrage.

**Estimate of Utilitarianism.** Utilitarianism has been variously and scathingly criticised. It has been characterised as entirely materialistic which degrades human beings. Pleasure in itself is not the highest end of life. According to Sabine, there is no logical connection between the happiness of the greatest number and the greatest happiness. Moreover, the Utilitarians have proved that human beings are merely selfish. This is not the true estimation of the human nature. Nor is Hedonism universalistic. Pleasure is always individual; what is my pleasure may not be yours. Pleasure being personal, it is difficult to conceive of a thing like general pleasure.

All the same, it cannot be denied that Utilitarianism demolished the theories of natural rights and Social Contract and the mystic Idealism of the German philosophers. It brought political theory to practical realm of life and, according to Green, "whatever the errors arising from its Hedonistic psychology, no other theory has been available for the social political reforms containing so much truth with such ready applicability." It rescued the individual from his absorption by the State and had been the harbinger of important reforms in England for the greater part of the nineteenth century. Bentham placed the individual before the State. He was convinced that individual initiative and freedom were the essentials of happiness, and that State interference must be jealously watched. In the same way, he asserted the necessity of men as equals. While rejecting the claim to equality on the grounds of a "Natural Right", he showed that equality was a political "good", because it was the only practical way of dealing with large number of people.

The Bentham criterion of utility also served to simplify the problem

of sovereignty. The legislature and the executive existed, he said, not by right of any contract or divine right, but simply to create or to maintain general happiness. The law was certainly to be a command, but it was at the same time to be useful, otherwise the individual has a moral right of rebellion. The State, to Bentham, was, for all practical purposes, to be a service State.

Utilitarianism, thus, only means the gospel of utility, and, as Ivor Brown says, "if we give to utility a broad and generous content, if we recognise that a wild uncultivated moorland is just as 'useful' to humanity as a forty acre field with wire fences and motor-plough complete, then Utilitarianism becomes a doctrine and policy which needs comparison." For the Utilitarians the basic idea is simply this, that all actions must be judged by their results, that is, by their fruitfulness in pleasure. The Utilitarians carried forward their principles step by step, each great thinker adding something of permanent value. Progress was their watchword, and their enthusiasm for liberty and the public good supplied the driving power. That is what the present time inherits from them.

+ individualist consider

## INDIVIDUALISM

see first line below Towards.

**Meaning of Individualism.** Laissez faire, the alternative name by which the theory of Individualism is known, recognises the individual as the centre of all social life and aims to establish that the State should leave him alone to determine his own destiny and the fullest and free development of his capacities and interests. The advocates of Individualism maintain that it is for him and by him that the whole social structure exists and derives its being. Individualism, in brief, exalts the individual to the position of reality in life.

As the society itself is nothing but a product of individuals themselves, the State exists to protect and restrain, not to foster and promote. (The State is, in fact, a necessary evil and it continues to exist so long as man does not attain perfection. Its functions are, accordingly, negatively regulative or protective, which include: protection from foreign aggression, protection of individuals against each other, that is, from physical injury, slander, personal restraint, protection of property from robbery and damage, and, protection of individuals against false contracts or breaches of contracts. Some theorists extend the functions of the State to include the protection of the weak and imbecile as also the prevention of epidemics, but others, as Herbert Spencer, who subscribed to the doctrine of the 'survival of the fittest' opposed it vigorously.)

**Development of the Theory.** (Towards the end of the eighteenth century) the prevailing doctrine of Mercantilism, which advocated a policy of active governmental regulation and protection of industry and commerce, received a final blow from the Physiocrats. The Physiocrats, the French School of Economists headed by Quesnay, maintained that the production of national wealth, like individual enterprise, should go its own way, unhampered and unhindered by legislative interference. They regarded private property and freedom of contract as the most obvious and essential phenomena of an ordered society. Their policy was that of "let alone" and of natural liberty, summed up in the famous phrase "laissez

*laissez, laissez passer*". Accordingly, the Physiocratic doctrine considered a governmental policy good to the extent that it respected private property, permitted free competition everywhere, and recognised an absolute equality of all individuals before the law.

The new doctrine obtained a firm hold in France and from that country it spread over all Europe. But the creed of *laissez faire* became a more authoritative and accepted doctrine as a result of the teachings of Adam Smith and other English classical economists. Adam Smith has to his credit the achievement of taking the raw material supplied by others, of adding to it from his own genius, and of moulding it into such a form that without losing any of its scientific value his book (*Inquiry into the Nature and Causes of the Wealth of Nations*, published in 1776) achieved immense popularity and was widely read. Adam Smith and his followers advocated that natural economic principles, fixed private property, and free competition were the essential features of a rational economic system. This doctrine was in accord with the then prevailing Utilitarian ethics and its authors tried to show how the natural economic and ethical principle should work normally in a capitalist system.

But Individualism as a social and political theory is a product of the nineteenth century and is essentially associated with the teachings of John Stuart Mill and Herbert Spencer, though its germs are found in the Social Contract Theory. The Contractualists, Hobbes, Locke and Rousseau, accepted the individual as a separate entity who strived for the maintenance of his natural rights and the State came into being to protect the same. But Hobbes ends in an absolutism of the worst type by upholding the claims of the State as against the individual. Locke remains throughout an Individualist. He starts from the Individualism of the state of nature and ends also in Individualism. Rousseau began in the methods of Locke and ended in those of Hobbes. Even if it be conceded that the exponents of the Social Contract Theory made the individual as the only political real, their Individualism, as Lords says, was "Abstract Individualism". It was in no way a systematic theory of the rights of the individual or a movement. Mill and Spencer regarded "individuality" as the only basis of social well-being and stated in clear and precise manner a full doctrine of the individual's rights against the possible claims of the State, and determined the province of its activity.

**Adam Smith.** It goes to the credit of Adam Smith to influence the economic ideas of Mill and even Spencer. To Adam Smith enlightened self-interest was the rule with every individual as it ultimately led to the good of the community itself. Every man, he asserted, would do that work for which he had an aptitude and was personally interested if he was left to himself. If every individual, he argued, is allowed to follow his pursuit as and what he deemed best, he would be a greater gainer and that would ultimately result into the good and prosperity of the community as a whole. Adam Smith based his arguments on the concepts of 'division of labour' and 'free competitive forces' and concluded that even if a few amassed wealth because of their superior ability, greater energy and enterprising spirit, still it would not be baneful as on the whole the wealth of the community had increased and civilisation advanced.



**J. S. Mill.** John Stuart Mill was certainly a great individualist and, in fact, the high priest of Individualism. His essay on "Liberty" is an eloquent enunciation of the principles he preached and a matter of fact analysis of his reasoned conviction. The object of his essay on Liberty, writes Mill, "is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used by physical force is in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end of which mankind are warranted, individually or collectively, interfering with the liberty of action of any of their members, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him or reasoning with him, or persuading him or entreating him but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."

It is a lengthy quotation, but it epitomises the whole truth about the political philosophy of Mill's Individualism. Mill definitely and very clearly sets limits to the interference of the State with the liberty of the individual. The only justification to him for the interference of the State arises when self-protection demands it or when the individual's action jeopardises the liberty of other individuals or adversely affects them. Beyond this the State must not govern though it may be in the interest of the individual himself. "The only freedom which deserves the name," Mill maintains, "is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health whether bodily or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest."

Mill objects to the interference of the State on three grounds. Firstly, when the thing to be done is likely to be better done by individuals than by the government. One specially interested in a particular business or industry and having an aptitude for that kind of work can better do it than "the hired servants of the government". Secondly, even if the individuals may not do the particular thing so well, on the average, as the officers of government, it is nevertheless desirable that it should be done by them rather than by the government as a "means to their own mental education... a mode of strengthening their active faculties, exercising their judgment and giving them a fair knowledge of the subjects with which they are thus left to deal". Thirdly, leaving of things to govern-

ment means the great evil of unnecessarily adding to its power. "Every function superadded to those already exercised by the government causes its influence over hopes and fears to be more widely diffused, and converts, more and more, the active and ambitious part of the public into hangers-on of the government. If the roads, the railways, the banks, the insurance offices, the great joint stock companies, the universities, and the public charities, were all of them branches of the government, if in addition, the municipal corporations and local boards, with all that now devolves on them, became departments of the central administration; if the employees of all these different enterprises were appointed and paid by the government, and looked to government for every rise in life, not all the freedom of the press, and popular constitution of the legislature would make this or any other country free otherwise than in name."

Mill regarded the State as a necessary evil. He does not desire its abolition, but he wants to have of it as little as possible. He emphasises that the individual must be allowed the maximum of liberty to determine his own affairs, as every restraint is an evil and every extension in the power of the State is antagonistic to the individual's liberty. He says, "The mischief begins when, instead of informing, advising and upon occasions denouncing, it makes them work in fetters, or bids them stand aside and does their work instead of them." To Mill the worth of the State in the long run is the worth of the individuals composing it. If it does not provide them an opportunity to develop and expand their mental faculties, it is neither good for the individuals nor for the government.

**Herbert Spencer.** Spencer's contribution to Individualism is also outstanding. His philosophy is characterised as "an incongruous mixture of natural rights and physiological metaphors" but out of the complexities he creates by using analogies from Biology and Physics, Spencer emerges, paradoxical as it may seem, an Individualist. He divided the stages of the development of society into those of status and contract, the former being the military stage with its characteristic of compulsory co-operation and the latter industrial with its characteristic of voluntary co-operation. He shows that in the movement of society towards progress there was "less of integration and more of individuation", and, as such, the functions of the State and its interference would lessen as society progresses till there would come a period when there prevails "the blessedness of final anarchy". Spencer would, therefore, assign to the State only negative functions embracing police, army and justice, and the maintenance of contracts. He asserted that the essential functions of the State were the enactment and enforcement of law, the administration of justice, the maintenance of order, the protection of life and property, and the prevention of invasion by foreign powers. The assumption of any other functions by the State, said Spencer, was an invasion on private rights.

According to Herbert Spencer, the individual has but one right, the right of equal freedom with everybody else, and the State but one duty, the duty of protecting that right against violence and fraud. He, accordingly, protested against all legislation for the regulation of commerce and trade; against sanitary legislation, such as quarantine, vaccination and registration laws; against public education; against poor relief by

the State; and even against State managed post offices and currency issued by the State. Spencer, in fact, condemned what he called the worship of the legislature and asserted that as the "great political superstition of the past was the divine right of the kings, that of the present is the divine right of Parliaments". The State has, in brief, "no business to interfere with the wise severity of nature's discipline; which makes us better when we do things for ourselves and—what is more—makes the things which we do for ourselves, better done than those which the State does for us". Herbert Spencer admires and advocates the law of the survival of the fittest, according to which the State should allow the poor, the weak and imbecile, the insane, the ignorant and the inefficient to go to the wall.

Following is the summary of various arguments on which Individualism was based and advocated.

**The Ethical Argument.** The ethical argument in defence of Individualism has been put forward by Kant, Fichte, Humboldt, and John Stuart Mill. Humboldt says, "The aim of the State should be the development of the powers of all its single citizens in their perfect individuality that it must, therefore, pursue no other object than that which they cannot pursue of themselves, viz., security." The State interference with the individual's liberty of action destroys his initiative and self-reliance. It weakens his sense of responsibility, saps his energies and cripples his character. The individual can develop his personality only in an atmosphere of perfect freedom of action. The policy of *laissez faire* means the freeplay of the forces of competition, which is the law of nature. "Nature submits to him who most energetically and resolutely assails her. She grants her rewards to the fittest, therefore, without regard to other considerations of any kind." (Free competition develops in the individual the highest possibilities, sharpens and strengthens his powers of initiative, and increases his sense of self-reliance.) Civilization and national progress depend on individual's faculties of self-help and self-reliance. "The highest civilization "has been developed under individualism, a system which has produced more material and educational progress than could ever have been produced under paternalism."<sup>2</sup> Self-interest is universal principle in human nature and each individual knows his own interests best. The considerations of justice, therefore, demand that man should have a natural right to be left alone. Morality consists in the performance of self-imposed imperatives of duty. Spontaneity and freedom are the essence of the moral development of man. (An excess of government, says Mill, "starves the development of some portion of the bodily or mental faculties, when it deprives one from doing what one is inclined to do or from acting to one's judgment of what is desirable.")<sup>3</sup> The ethical argument, in brief, rivets on the ideal to develop personality to such an extent that government becomes superfluous and each man becomes a law unto himself. Summing up the results of Government's interference and fostering policies, Lecky said that they lend to "the

2. Garner, J.W., *Political Science and Government*, p. 461.

3. Mill, J.S., *Political Economy*, Vol. II, p. 561.



weakening of private enterprise and philanthropy; a lowered sense of individual responsibility; a diminished love of freedom; the creation of an increasing army of officials...., the formation of a State of society in which vast multitudes depend for their subsistence on the bounty of the State. All this cannot take place without impairing the springs of self-reliance, independence, resolution, without gradually enfeebling both the judgment and character." The individual should, therefore, be left alone.

**The Biological Argument.** It has been contended that the principle of Individualism is in accord with the law of organic evolution. (Herbert Spencer, with his biological analogy, proved that as in the animal life so in the social order, the individual should struggle for himself and survive or perish, because the fittest will, and ought alone to survive the weak and incompetent must go to the wall. Survival of the fittest is the law of nature and progress of society depends upon the elimination of the weak by the strong. Any attempt by government to interfere in the eternal struggle for existence is an attempt to modify nature. "The essential end of government is to support nature, to maintain as far as possible a condition under which each adult receives the good results and suffers the evil results of his own nature and conduct." Spencer says compulsory and public education, poor relief and social legislation are futile attempts to change natural conditions. The attempt to perpetuate the weak and put them on the same plane as the strong, is to preserve the unfit at the expense of the fit. "Government should let poverty and unsanitary houses alone, so that weaker types may sooner die out; it should let industrial competition alone, however intense, for by such competition the best individuals come to the top," and, thus, the good of society is promoted.)

**The Economic Argument.** Besides ethical and scientific arguments of Mill and Spencer, Individualism has been advocated on economic principles. (Adam Smith is credited for influencing the economic ideas of Mill and Spencer. To Adam Smith enlightened self-interest was the guiding principle with every individual and each would do his work well in which he was personally interested; if he were left to himself. This would ultimately lead to the good of the society as a whole. Trade and industry, Adam Smith maintained, flourish best if left to private enterprise. In an open competitive market all factors of production adjust themselves to the forces of demand and supply. (Free competition stimulates production, regulates price and encourages free flow of capital and labour.) The freedom of each to do as he pleases with his land, labour, capital and organisation is in the general interests of all and consistent with Bentham's doctrine of the greatest happiness of the greatest number. Hence from the economic standpoint it was urged that a policy of *laissez faire* would be in the highest interests of society, and any artificial restriction imposed by government would put out of gear the entire economic structure.)

**Argument from Experience.** The supporters of *laissez faire* appealed to history to establish the wisdom of non-interference. It was maintained that whenever the State had tried to control and regulate the social or economic life of the community, it miserably failed in its attempts. All props and supports of the State to industry, like bounties and subsidies,

prohibition, protection, etc., were mischievous and destructive of the ends which they were intended to secure. Referring to those who were responsible for this sort of legislation, Buckle observed that "they went blundering along in the old track believing that no commerce could flourish without their interference, hampering that commerce by repeated and harassing regulations, and taking for granted that it was the duty of every government to benefit the trade of its own people by injuring the trade of others."<sup>4</sup>

**Argument of State Incompetency.** Finally, the exponents of Individualism argue that if the State is to interfere in the economic life of the nation its omniscience may lead to incompetence. As an **entrepreneur** government is bound to be an utter failure, for it is a simple principle of business that those who bear the risk conduct the business more efficiently and economically than the officials of the State who have nothing at stake. State management, moreover, means routine, red-tapism, unnecessary delay, bad economy and corruption. In short, State management of industry is attended with all the evils of bureaucratic administration.

### CRITICISM OF THE "LAISSEZ FAIRE" THEORY

Theory of *laissez faire* was warmly advocated in the nineteenth century and it practically became the political creed of every civilised government. But soon its defects became obvious and there was a great reaction against Individualism. The critics of Individualism argue that:

① The State is not a necessary evil. The assumption of the Individualist theory that the State is a necessary evil is essentially wrong. It is preposterous to suppose that the State came into existence for the sole purpose of keeping in check the selfish and evil propensities of man. The State, as a matter of fact, originated in the bare needs of human life, and it continues in existence for the sake of good life. It is the necessary medium of individual progress and, as Burke put it, the State is "a partnership in all science, partnership in all art, a partnership in all virtue and in all perfection." The functions of the State, in a complex and highly integrated society like ours, cannot be merely repressive and "negatively regulative". It has a higher task of protecting, encouraging, and fostering the common welfare. The Individualists err in maintaining that civilization increases by leaving man alone to manage his own affairs. On the contrary advancing civilization demands increasing state-regulation. "The higher the state of civilization," observed Huxley, "the more completely do the actions of one member of the social body influence all the rest; and the less possible is it for any one man to do a wrong without interfering more or less with the freedom of all his fellow-citizens, so that even upon the narrowest view of the functions of the State, it must be admitted to have wider power than the advocates of the *laissez faire* theory are disposed to admit." The Individualism of Spencer is wholly inadmissible under the conditions of modern society.

4: As cited in Garner's *Political Science and Government*, p. 463.

**Laws do not curtail liberty.** Similarly, (the advocates of Individualism wrongly assume that extension in the activities of the State is antagonistic to liberty. As previously pointed out, liberty without restraint cannot exist. Unrestrained and unrestricted liberty is a licence. (True liberty means the power to choose and do the right. If there is no opportunity for all to realise equally their rights, there is no liberty. The laws of the State do not curtail liberty, but promote and maintain it. Liberty involves certain restraints and in this sense law is the condition of liberty. Liberty is destroyed only when such restraints are arbitrary and unjust. Mill's contention, therefore, that every increase in the power of the State is a corresponding decrease of individual choice and spontaneity is too sweeping.

In the same way, it is a mistaken view of the Individualists that the intervention of the State in the interests of common good always involves a curtailment of individual freedom. One fails to understand how does a pure food law, a factory Act, or compulsory vaccination or a quarantine regulation infringe the liberty of the individual. In fact, the good of all is enhanced and their freedom secured by necessary restrictions. It is somewhat like pruning a fruit tree or trimming a vineyard; it means a loss of some fruit, but better fruit is produced so that all are gainers in the end.

② **Man is not always the best judge of his interests.** The argument that man is the best judge of his own interests is true only to a very limited extent. Society is a better judge of intellectual, moral, and even physical needs of the individual than he himself can be. The Individualists placed too much reliance on the individual and expected too much from everyone. They assumed that every individual was "equally farsighted" and possessed "equal capacity" to know and do what was really in his interests. They also assumed that every individual had an "equal power" and an "equal freedom" of choice to satisfy his needs. But all these assumptions ignore the differences in intelligence, capacity, determination and resolution of different men coupled with the complexities of one's social position. \*Self-interest is, \*undoubtedly, \*the motive of every man, but his interests and motives cannot be separated from the interests of society. Being a social animal, he adjusts his interests in such a way as they may not conflict with the interests of his fellow-beings. Man is born in society and he lives and dies as its member; he cannot, therefore, be so self-interested as to be altogether oblivious of his social obligations. \*If he is, (the State, as the guardian of the rights of all, has the right to regulate individual activities. \*And, then, all governmental regulations may not have a prejudicial effect on the development of individual character. Past experience, on the other hand, tells us that the State provides and maintains those conditions which help man to be the best of himself.

**Competition a positive handicap.** The main thesis of *laissez faire* rests upon the forces of free competition. Competition may be good for those who are economically strong, but for the weak it is a positive handicap. Workers are the worst sufferers and their misery, starvation, ill-health and inefficiency are the direct results of the so-called free competition. There can be no competition in a society in which there exist



"glaring and galling inequalities." Moreover, competitive methods of production involve use of machinery, division of labour, localisation of industry and demarcation of functions. Free competition leads to the formation of combinations, pools, trusts and cartels. All these methods of capitalistic production really retard competition, create condition of over-production, and bring about disequilibrium between demand and supply. The producers produce heedlessly and without any reference to the social values of the commodities. Opponents of Individualism, accordingly, maintain that all this waste and maladjustment can be avoided if there is planned production. Proper planning also secures for every one equality of opportunity and equality of reward. The argument that government is least competent to undertake economic enterprise is disproved by facts. The State has now stepped in to fight against individual selfishness, apathy, and inefficiency which Individualism has produced.

⑤ **Survival of the fittest a misleading argument.** Finally, (the individualistic argument of the survival of the fittest is as misleading as it is inhuman. The law of the survival of the fittest cannot be applied to human beings. It is not the physically fittest, but the normally best who survive. If the law of the survival of the fittest is to be accepted as the natural law, it is just to glorify brutal forces and perpetuate barbarity. We must, therefore, say good-bye to such a kind of Individualism.

**Economic and Political consequences of Individualism.** Some of the most notable changes which Individualism has brought about are those that have occurred in the field of production. Never before in history had mankind come within the reach of plenty, actual or potential, as in the nineteenth century. The technique of mass production is unprecedented, and it has made available to the consumer such a variety and volume of commodities hitherto unknown. Developments in the means of communications and transport, and freeing of domestic and international trade have resulted in great extensions of markets defying all barriers of distance and space. Mass production, standardization of goods, rationalisation and integration of industries, extensive markets, and competition have all contributed to reduction of prices to such an extent that in many instances what once were luxuries for the few have now become necessities for the many. In general, all this has spelled itself out in a series of changes that from the material standpoint have contributed enormously to human well-being, and in various countries, among which the United States is the pre-eminent example, have made possible the highest standard of living in the world.

But every rose has a thorn and in the case of *laissez faire* doctrine, it has proved to be a thistle. Whenever and wherever it has pricked, it has made the individual and the society bleed profusely. When millions of individuals take independent decisions in the act of production on the basis of their own calculations, the result is ruinous. A striking example of this is trade cycles which put out of gear the entire economy of the country and consequently give a big shake to its political life too. Economics and politics march together. If not all, most current governmental problems are not merely political in essence, but have, in addition, far-reaching economic implications.

Then, the application of *laissez faire* doctrine, particularly to an economy in the course of change from a mainly agrarian to a mainly industrial base, has unhinged the entire social structure of society. "For industrialism alters the physical environment in which men move, reshapes their everyday habits of living and working, and produces effects that are drastic, the less there is of planning and regulation." Expansion and localisation of industries bring into existence huge congested cities where masses of human beings are over-crowded, overworked, underpaid and underfed. Competition has its own destructive results. A few become more richer and the more powerful and the baneful argument of the survival of the fittest paves the way for a privileged class to grow and society definitely comes to be divided into two classes—'haves' and 'have-nots'; the very rich and the very poor. The State does not move. "The central concept of *laissez faire* that upheld State inaction as a virtue formed an umbrella beneath whose shelter economic organisations could luxuriate and thrive."

But economics is politics too. Those who amass wealth begin to man the State as well. They divert the machinery of the State to their own advantage. Political democracy becomes an absolute farce. Hence the net result of Individualism of the nineteenth century was to employ the powers of the State what business deemed its interest. The functions of government were deliberately limited, and, as Karl Marx observed, capitalism contained in itself the seeds of its own destruction.

To sum up, Individualism is not a tenable creed, because it rests upon false assumptions and pure Individualism in the conduct of government is not possible. "As a matter of political justice it rests on a mechanical attempt to divorce individual and social rights completely. On an economic basis it overlooks the plain advantages of co-operation and regulated efforts. As a scientific law it will not stand." The truth of this statement is manifest and, today, we do not find any State which is simply a police State and follows in entirety the practices dictated by Individualism.

### MODERN INDIVIDUALISM

*The old*  
**Factors promoting the growth of Modern Individualism.** The reaction against Individualism of the nineteenth century was fully witnessed by 1880, when its authority began to wane, and by the end of the century it had been largely superseded by the Absolutist and Collectivist theories of the State. And when the Absolutist and Collectivist theories of the State were taken to extremes there was again a reaction in favour of Individualism, though in a modified form. Professor Joad correctly says, "But the reaction against Individualism has produced a reaction in its turn. The wheel has turned full circle, and the present dissatisfaction with the State has promoted a revival of individualist thinking akin in spirit, though not in form, to the Individualism of the nineteenth century." *new para*  
 Modern Individualism is a name given to certain modern tendencies which exhibit a reaction against the nature and characteristics of the State as attributed to it by the Idealists and the Collectivists. It

represents a revolt against the intellectualism of the Hegelian philosophy and the omniscience of the State. It is, also, a protest against the despotism of the bureaucratic governments of the World War. Finally, modern Individualism is a deep reaction against the rule of the majority in a parliamentary system of government which is characterised as tyrannical and a complete defiance of the interests of the minorities. The fundamental difference between old and new Individualism is that the former emphasises the importance of the individual and raises him high on the pedestal of political glory whereas in the latter the emphasis is on groups and associations which honeycomb the life of man. The individual, it is claimed, is nothing without a group life. The modern Individualists even attack the concept of the sovereign State. They regard the State as one like various other associations and would not give it a status higher to that.

The most important factor promoting the growth of modern Individualism is, therefore, (the progressive growth of associations) of all kinds embracing the whole life of man and thereby, (eliminating the State from his private life. These associations are, it is maintained, the expression of the plurality of the wants of man and the channels which satisfy those wants and account for his welfare. Without them man cannot be what he wishes to be. The associations are consequently as natural to man as his nature compels him to live in the State. Both are spontaneous and independent of one another in their origins. The State, therefore, cannot claim a special prerogative of superiority over other associations. They are equal and co-ordinate to one another. (The State is only one among other forms of associations and it has no superior claim to the individual allegiance. (The only difference between the State as an association and other associations is that membership of the State is only a matter of necessity) and, as such, compulsory, (while membership of other associations is a matter of choice) and, accordingly, optional. But both serve the same purpose and strive to attain the same objects. *have gradually* ②

The second factor is the sense of frustration created by the conditions of the World War I. The belligerent States made exacting calls on the people and their resources in an all-round effort to win the War. In the name of the State, its independence, sovereignty, and integrity, extreme sacrifices were demanded from the people and they gave a willing and enthusiastic response to all such calls in the beginning. But the heavy toll of life which the prolonged War had taken, together with the uncertainty of the results of War, produced a feeling of hostility against the State and government which had brought so much incessant misery, sorrow, affliction, devastation, destruction and destitution to mankind. The people even began questioning the utility of the State and familiar with the teachings of Hegel and their own experiences with the demands of Governments, they could see what this "march of God on earth" could contribute to the uplift of man and society.

They, thus, resented the enormity of the powers which the State had assumed for itself. The enormous extension of governmental activity and the consequent curtailment of the liberty of the individuals meant increase in the number of officials and in the scope of their authority. It began to be believed that it was the growth of new despotism which need



be curbed. and, hence, the public resentment against the State and its authority. Even the foundation of traditional political obligation was shaken.

③ (The people had also lost faith in the parliamentary system of government. The War and war-time psychology gave rise to a quickened apprehension of the majority rule. The mechanical way in which the majority party supported the government, the irresponsible way in which the majority behaved towards the minorities, and the mob psychology displayed in the legislature, in the press and on the platform all created strong feelings of a serious threat to the individual's freedom of mind. The people felt that the representative system of government has in practice degenerated into a tyranny of the majority rule. It was, accordingly, realised that the transference of legal sovereignty to "the majority of the moment under the name of the State was no guarantee of universal happiness". The way out was suggested in decentralising the powers and functions of the State over as wide an area as possible.)

**Philosophy underlying Modern Individualism.** The State, according to modern Individualists, is little more than a federation of groups, a union of Guilds, or a "community of communities". They deny the proposition that the State <sup>was</sup> come into existence in response to any peculiar need of man. The State is viewed as merely a piece of administrative machinery useful for co-ordinating activities and adjusting claims between conflicting groups and associations. They challenge the supreme moral position of the State which is attributed to it by the Idealists. It is maintained that the State is just one of the many associations and it cannot claim, on any moral grounds, any better allegiance of the people. The State does not and cannot possess a real personality and a real will over and above the personalities and wills of the individuals who compose the State. All groups possess, equally with the State, personality. Loyalty of people to the groups sometimes outweighs the loyalty which they owe to the State. Viewed, as such, modern Individualists do not consider the State as indispensable; it can be scrapped off the moment a suitable machinery to replace it is devised.)

Modern Individualism finds its expression in the teachings of recent political thinkers. Though there is a good deal of difference in their methods of approach, yet they exhibit a common endeavour to provide the basis for such a theory. The first is Norman Angell, the apostle of internationalism. Internationalism denies the identity of the State with society, and it strengthens the pluralist view of the State. Internationalism like pluralism aims at discrediting the monistic theory of the sovereignty of the State and emphasises the multiplicity of relations outside the State.

Norman Angell in his book, *The Great Illusion*, contends that men are united by a community of feeling based on economic interests, since they always do what pays them best. But they are led to take a wrong view of what pays them as the competing States baffle them misrepresenting the issues and fostering national feelings. Once they begin realizing that it pays them better to think and feel as members of the universal economic society, whose attribute is peace, they would discard the divi-

sion of society based upon territorial boundaries whose attribute is war. Angell asserts, "People who act wisely as individuals act like fools as citizens, and the world suffers in consequence." He regards the State as merely a piece of administrative mechanism which can be superseded whenever a suitable machinery is evolved. Angell, therefore, looks forward to a time when the national State is merged in an international order of society based on an economic class basis. The Guild Socialists accept all that is good in Angell's but differ from him in defining the nature of society.

Graham Wallas is another exponent of modern Individualism. Wallas, in his book, *Great Society*, shows a similar "distrust of the power of the over-developed State." But he devotes himself mainly to the problem of representative government. He says that modern centralised State, with Parliament as its chief organ, is hardly an effective instrument for the expression of the popular will. He holds the present system of representation as very much defective, because the electorate is hypnotized by the popular press and drugged by the damagogue. Wallas, accordingly, proposes, in the first place, that representation should be both on vocational and geographical basis, the former for a second chamber and the latter for a lower chamber. Secondly, he suggests certain safeguards against the majority oppression.

The Guild Socialists also subscribe to the idea of a democratic society consisting of a network of functional bodies. They hold society as a federation consisting of two kinds of groups, the producers and the consumers. They attack the political basis of the modern State and emphasise democratisation of society by the functioning of autonomous Guilds.

Miss Follett, in her admirable book, *The New State*, gives a new meaning to modern Individualism, and the sub-title of the book, "Group Organisation, the Solution of Popular Government" is significant of this meaning. Miss Follett agrees with the pluralists and others who contribute to the theory of modern Individualism on the importance of the groups. But she does not accept "the group as the unit of politics." The pluralists glorify the group whereas Miss Follett emphasises "the group in relation" as the object of our study "if that study is to be fruitful for politics". The individual, the group and the State all play their respective parts. In the introduction of her book, Miss Follett says, "...But the individual, the group, the State—they are all there to be reckoned with—we cannot ignore or minimise any one." She, therefore, does not agree with those pluralists who either intend to lose the individual in the group or those who abandon the State for the group. "No government," in her considered opinion, "will be successful, no government will endure, which does not rest on the individual, and no government has yet found the individual." And the individual of Miss Follett's dreams does not believe in the old and fallacious idea of "self-and-others" as the basis of his social existence. He seeks "self-in-and-through-others" for the expression of his personality. The true man is found only through group organisation, because "the potentialities of the individual remain potentialities until they are released by group life. Man discovers his true

nature, gains his true freedom only through the group. Group organisation must be the new method of politics because the modes by which the individual can be brought forth and made effective are the modes of practical politics."

As regards the State, it is, according to Miss Follett, not made by external acts, "but by the continuous thought and action of the people who live its life. The life of the State is moral ordering and the power of the State is a moral power accumulated through the spiritual activity of its citizens. The spiritual activity of the citizens can be achieved through the creative power of man as brought into visibility and actuality through his group life." The State, thus, unifies the manifold interests of the individual. It is the "ordering of his infinite series into their right relations that the greatest possible welfare of the total may be worked out". This is the function of the State and it is morality in its essence and completeness.

**Difference between old and Modern Individualism.** Modern Individualism differs from the old Individualism in certain fundamental aspects. The former regards the group and not the individual as its unit for political purposes. This is essentially due to the fact that Individualism of the nineteenth century failed to provide necessary protection to the individual against exploitation of the capitalist and the tyranny of the majority rule.<sup>6</sup> The group is organised for two purposes in the first place, to protect the individual against the oppression of the majority, and secondly, to promote certain interests and ideas which its members have in common. The enormous size of the State prevents it is maintained, fuller expression of the common will and the development of individual personality. The smallness of a group, on the other hand, sufficiently provides such opportunities. The group is, therefore, considered as the best medium for the development of real personality of the individual and the only effective guarantee of that personal liberty, concern for which forms the most valuable element of the old Individualism as expounded by Mill.

### FASCISM

**Fascism Analysed.** Fascism, too, is the product of the First Great War. It is a tragedy of human life that "two diametrically opposite babies be born of the same parents. On the one hand, the Pluralistic theories initiated an era of iconoclasm against the Absolutist State; on the other hand, it sowed the seeds of a totalitarian State which was to be far more autocratic than any State we had so far seen." Fascism presents a complete repudiation of the assumptions, ideals and methods of democracy, Liberalism, and Socialism. Liberalism and democracy look to the interests of the individual, Socialism looks to the interests of an economic class, for Fascism, society is the end, individuals the means and its whole life consists in using individuals as instruments for its ends. The ideology of Fascism is dominated by the dogmas of a State and irresistible government, which has the right to interfere in all spheres of

6. Joad, C.E.H., *Introduction to Modern Political Theory*, p. 38.

7. Coker, F.W., *Recent Political Thought*, p. 475.



the individual's life, whether economic, moral or religious. Civil life, according to the Fascist creed, begins with the State and, therefore, all are in the State and no one outside the State. It commands all and it is the essence of the State to govern. A citizen's obligations to the State are more important than his rights. Fascism "proclaims the rights of the State, pre-eminence of its authority, and the superiority of its ends". No aspect of social life escapes the discipline of Fascism. It repudiates pacifism and glorifies war. "War," said Mussolini, "alone brings up to its highest tension all human energy and puts the stamp of nobility upon the peoples who have the courage to meet it. . . . Thus a doctrine which is founded upon this harmful postulate of peace is hostile to Fascism."

**Rise of Fascism.** Fascism first emerged in Italy in the critical period immediately after the Great War of 1914-18. Italy at that time experienced the worst characteristic features of post-war economic disorganisation. There were gross profiteering, inconceivable inflation, soaring prices, strikes for higher wages to meet the rising cost of living, deficit budgets and unemployment of the war-weary soldiers. Italy, though victorious in the War, was diplomatically defeated. Her gains from the spoils of the War were not commensurate with her sacrifices, and Italy had consequently to withdraw her delegation from the Paris Peace Conference. It was in these critical times that Mussolini, with his Fascist creed, stepped in to rescue Italy from collapse. It is beyond question that Fascism changed Italy. In 1929, seven years later, Mussolini, as head of the Fascist government, boastfully spoke of the "immense panorama of material and moral transformations which we have accomplished". Fascism gave to Italy a strong and centralised government which exacted disciplined obedience from her people and established her international reputation as a first-rate power. It ended the war between labour and capital which, before the rise of Mussolini to power, had threatened to plunge Italy into chaos. There was a phenomenal development of Italy's industrial and, especially, agricultural resources. Finally, Fascism taught the meaning of nationalism to Italians and inspired them with a new faith in new ideas.

**The Structure and Policy of the Fascist State.** After the famous "March on Rome" Mussolini accepted the allegiance of the King and became the Premier. For a brief period he made some attempts to preserve the institutions and practices of parliamentary government. But, Mussolini made it clear from the very beginning that he would ignore Parliament, if it withheld from him the extraordinary powers which he demanded to run the government. Meanwhile, opposition outside the legislature was being crushed by repressive governmental measures, and by the violent acts of the Fascist armed squads. In January 1925, Mussolini broke away from the constitutional system and he governed Italy by decrees which gave legal forms to the Fascist policies and in achieving complete political centralization and absolutism. In November, 1926, all "opposition parties were dissolved and prison sentences were provided for those who tried to revive the parties or who carried on propaganda for their doctrines". By other decrees the responsibility of the

Ministry to Parliament was abrogated. The King formally remained the constitutional head of the State, but the real head of government was the Premier with full authority to issue decrees having the force of law. The Ministers were not colleagues, but his subordinates. They were appointed by the Prime Minister and were individually and collectively responsible to him. Italy, thus, like Russia, became a one-party State and the National Fascist Party, like the Russian Communist Party, was a close corporation, hierarchically organised. Members were admitted to the party only after tests as to their Fascist character and loyalty. They were to take an oath to follow without question the orders of the Duce. "Having created the Fascist Party," wrote Mussolini, "I always dominated it."<sup>9</sup> The party and the government had given to Mussolini, in brief, a *carte blanche*. It was his party and his government. Throughout Mussolini's autobiography are his assertions of "my command", "my guidance", "my sense of balance and judgment", "my irresistible domination".<sup>10</sup>

The Fascist policy might be summarised as: the restoration of the power of the Italian nation externally, and the establishment of vigour in the domestic administration of economic and civil affairs. Mussolini and his counsellors had always believed "that the prestige and influence of the State require an assertive foreign policy and a rigidly hierarchic organisation of domestic government". For the realisation of these aims the Fascists recognised no individual liberties as sacred. They instead relied upon the methods of moral intimidation, physical compulsion, and official propaganda. Both in their activities before seizure of formal power and in their subsequent government policy, the Fascists dealt summarily and malevolently with their opponents.<sup>11</sup> Unprecedented repressive methods were explicitly adopted and embodied in the laws and decrees of 1925 and 1926. It was a crime punishable to criticize government, to conduct propaganda for the doctrines and parties dissolved by government, and to spread "false" or "exaggerated" news abroad concerning internal conditions of the country. There was a rigid control of all published opinions. The law required "every newspaper or other periodical to be operated under the control of a Director approved by the government and limited the contributors to persons registered by the Government-controlled syndicates of journalists. The Government had vigorously prosecuted and suppressed socialist and liberal periodicals and had "fascitized" the more mildly critical journals, forcing the replacement of independent managers and editors by persons who will applaud, without serious qualifications, the Fascist rule."<sup>12</sup>

**Fascist Doctrine.** Fascism had no political theory. It was wholly empirical and practical. Mussolini had a disdain for theory and very often he repeated, "My programme is action, not talk". He exalted Fascism by contrasting its reality and definiteness to the sterile theories of other movements. "Fascism," Mussolini said, "is based on reality; Bolshevism is based on theory... we want to be definite and real. We

9. Benito Mussolini, *My Autobiography*, p. 296.

10. *Ibid.*, pp. 144, 162, etc.

11. Coker, F.W., *Recent Political Thought*, p. 470.

12. *Ibid.*, p. 471.

want to come out of the cloud of discussion and theory." Despite this emphasis on realism, Fascism has certain theoretical assumptions which formulated its general social ideals. Its aim was a fundamental reorganisation and invigoration of Italian life and, to that end, a restoration of the strength and prestige of Italian governmental authority. In the fulfilment of these aims Fascism displayed a striking combination of realism and mysticism. Its clarion call was action first, theory afterwards. The methods which it adopted in the pursuit of its ends were not fixed, as they were not based on any reasoning. They were highly flexible and could easily be adjusted and made workable in attaining its objects; so, naturally, they could not be consistent with one another.

The State or nation, according to the Fascist assumption, is an independent entity with a real will of its own. This real will of the State is quite distinct from the popular will which democracy owns. The Fascists deemed popular sovereignty a fictitious creation of democracy; and democracy they denounced because it gave power to masses to decide innumerable issues about which they had no knowledge to exercise a sound judgment. The democratic notion of the equality of men was held to be wrong, for it was a mechanical process of "levelling human beings to one plane" thereby denying to them the "noble training" of nature. Here it seems that Mussolini emphasized the law of the survival of the fittest.

By society the Fascists meant a nation and a nation to them was the State. A nation, they explained, was based on "biological" similarities. It had a life more continuous, permanent and important than the lives of its members. The State was the organic structure of the nation. The State was, thus, the primary expression of the fact of nationality and it stood for absolute sovereignty, both moral and legal. The interests of the nation must take precedence over the individual interests and those of other groups. "A war for the preservation, expansion, or exaltation of a nation may be supremely justifiable, even though it may frustrate the special interests of every lesser group and destroy the lives of the nation's most worthwhile citizens." Thus, Fascism did not concede to the people liberty, equality and other rights, it rather scorned them. The individual had rights only in so far as the State conferred these on him. His will counted when it coincided with the will of the State. Liberty was not understood as a right, but as a duty. The State and its laws were the supreme manifestations of liberty. The citizen gained true personality and liberty by merging himself in the State. The Fascists, accordingly, substituted for liberty, equality and fraternity, three words of a higher and more noble significance: duty, discipline and sacrifice, which "encourage a man to employ all his faculties in an efficacious participation in national life".

These basic ideals of Fascism, viz., the nation is more important than any or all its members, and the interests of the nation must always precede and predominate over any sort of private interests, determine the Fascist principles of governmental structure and policy. Political authority, it was advocated, must be aristocratic because "only a minority of the nation has the capacity to perceive and give effect to national interest".



It should, at the same time, be autocratic, if it was to inspire respect and exact obedience. Sovereignty, it was claimed, was not vested in the people, but in the nation-State and only the few selected had the right to speak for the nation. These selected few possessed the ability to sacrifice private interests to the national welfare, and they were capable of pursuing the right way to that end by virtue of their inherited character and cultural training. They were, therefore, supreme guardians of the destiny of the nation. To reduce it to a simple formula, Fascism claimed that only the few could rule; only the few could make decisions, when there was leadership, there was virility.

The Fascists had always been explicit in defence of violence as a means of achieving political aims. Mussolini defended the destruction of property and maiming and killing people as practically and morally necessary. Following the suppression of the general strike in August 1922, he said, "After having made use of it (violence) systematically for forty-eight hours, we got results which we should not have obtained in forty-eight years of sermons and propaganda. When, therefore, violence removes a gangrene of this sort, it is morally sacred and necessary." This violence, employed during the period of revolution, remained the essence of Mussolini's policy both at home and abroad. His creed was that a man who was unwilling or unable to be a ruthless despot was not fit to be the head of the State. Force must be used to whatever extent a ruler found it necessary in guaranteeing the prestige and stability of his government and "maintaining orderly and efficient action in the economic life of the nation".

Fascism was an enemy of internationalism. "International peace," it claimed, "is coward's dream," and imperialism, according to Mussolini, "is the eternal and immutable law of life." Italian expansion, he said time and again, was a matter of life and death. "We are forty millions squeezed in our narrow but adorable peninsula... Italy must expand or perish." This is tantamount to preaching war. "We are charged," said Mussolini in 1925, "with having imposed upon our nation a war discipline. I admit it, and I glory in it."

The Fascists considered all economic questions from the standpoint of national utility. The production and distribution of wealth were primarily matters of national, not individual concern, because the nation must be economically and politically consolidated. "The productive energies of the nation must be maintained at their highest possible point in order to supply the means for maintaining virile citizens and preserving the national strength." The Fascists, therefore, managed and regulated the economic life of the country while maintaining individual responsibility and freedom of enterprise. Fascism rejected both *laissez faire* and State ownership. Private ownership of property was allowed, because economic self-interest was considered to be the most powerful incentive to productive activity. But this interest must be held in constant subordination to the national interest. The Fascist government was within its right to intervene at any time and in any way whenever it appeared to them that private initiative had failed in serving the national security and prosperity.

**Corporativism.** The Fascist party originally was favourably inclined to Syndicalism and it had advocated the right of each syndicate, or trade union, or workers to take over and manage production within the particular field of its own activity. But from 1926 onwards, or even earlier, it turned its original syndicalism into the new form of corporativism. It proclaimed the doctrine that in each branch or category of production a corporation should be established. There were two features of this corporation. In the first place, it was to be composed of syndicate (or trade union) of workers and the syndicate (or association) of employers concerned with that branch of production. In the second place, the corporation was not to take over and manage production, within its branch to the exclusion of private property and private enterprise. It would simply "regulate" the working of private property and the conduct of private enterprise, "under the aegis of the State".

Corporativism was essentially based upon the Fascist creed of "organicity"; completeness of the life of the nation in its totality. Since the nation must work as a totality and not a series of conflicting group interests, corporativism defied both liberalism and socialism. The former made the individual an end himself whereas the latter attempted to place the allegiance of the worker with all other workers throughout the world. Fascism insisted that the allegiance of both employers and workers must be to Italy first, and the class conception of solidarity was resolutely denied. "No worker in the name of class loyalty can impair the general productive power of the State; no employer can injure the workers and consuming population in the interests of a profit that is pernicious from a national point of view; the government as the symbol of organic unity of all must insist that the objective national allegiance is preserved."

Various laws were passed from time to time for the organization of the corporative state. By 1934, the structure was complete. The corporations were vested with legislative powers that fell directly within their competence. Each corporation was headed by a cabinet minister and it provided a basis for co-ordination in national economic activities. In 1936, Mussolini announced the end of the Chamber of Deputies. From 1928 to 1939, the corporations provided a list of parliamentary candidates, which after revision by the Grand Council of the Fascist Party was submitted to the vote of the national electorate. After 1939, the corporations themselves served as electorate and elected the members. In this way, the corporations directly provided the great majority of the members in the new Chamber of Fasci. The Fascist Party thus, enunciated the doctrine that the corporation was the proper basis for any system of national representation. "This was the answer," as Barker says, "to the Democrat, who thus saw his cherished system of quantitative representation on a territorial basis displaced by a new and so-called "qualitative" system which professed to elicit the last elements of the nation through the sieve of a vocation method of choice."

**Claims made for the Italian system of Corporativism.** The Italian system of corporativism has been lavishly praised. It is claimed that it

provided a new conception of the functions of the State. It is superior to the *laissez faire* and Socialism as it reconciled the State and the individual to one another by reconciling them both to the corporation. In the corporation the producers and the workers find their expression and conciliate their differences, the State standing by them and aiding them in their task. Secondly, corporativism is, or can be, distinct from any political regime. A totalitarian State is not only its climate, although it is the Italian product. Finally, corporativism is the democratic device of the twentieth century. By reconciling the differences of all factors of production in the field of economics, it brings them on a common pedestal and introduces a new system of representation which does not depend on geographical constituencies and ever hostile political parties, "but on the essential national cadres and their complementary interests".

But the claim made, particularly by the British admirers of Italian corporativism, that it is not essentially connected with a totalitarian State, and that it can be independent of a political regime is not tenable. Even the Italian theorists and statesmen had never made such a claim, except once by Mussolini when he said that corporativism was a part of the general development of the world's economy. But Mussolini had also maintained that genuine corporativism required the system of the single party and the State ruled by the elite. Authoritarianism is the long Italian tradition of government and the Fascist State was totalitarian. Corporativism was an organ of the administration of the State.

Nor does the third claim hold valid. The corporations were not based on a firm foundation of the freedom of the trade union. The corporation was determined and controlled by the State. Persons suspected of non-fascist tendencies were rigidly kept out and corporations were dissolved even on the slightest suspicion of anti-national activities. The system was, therefore, not a source of popular representation. It was neither a pattern of industrial democracy nor an alternative to parliamentary democracy and, as such, there is no justification in characterizing it as a new style and form of democracy.

## NAZISM

**Rise of Nazism.** The World War I was claimed to be a fight of democracy against autocracy. It was hoped that after the cessation of hostilities the world would emerge safer for the growth of democratic institutions. But soon after the Treaty of Versailles nearly three-quarters of the people of Europe found democratic governments either destroyed or in the danger of destruction. Italy was the first to experiment with a totalitarian State after Mussolini's famous march on Rome in 1922. Primo di Rivero was declared father of Spain in 1923. Then, followed the defeated Germany which had presented to the world the best specimen of a parliamentary government through the Weimar Constitution.

The unsettled economic and political conditions in Germany did not provide a satisfactory climate for parliamentary institutions. Nor had she any democratic traditions. She was groaning under the humiliating terms of the Treaty of Versailles. Deprived of her colonies, committed to a programme of heavy disarmament, officially forbidden by the treaty



to raise a German air force for years to come, and huge reparations which she had not the means to pay, Germany had become a third-rate international power. Within Germany itself there was complete economic collapse. The flight of gold from Germany and the reckless policy of inflation resulted into inconceivable depreciation in the value of the Mark and unprecedented rise in prices. There was widespread unemployment, the number in 1932 reaching the peak figure of six millions.

Germany, under the circumstances, could not be content with a sheer democratic Constitution. She was in need of an indomitable leader, no matter a liberal or reactionary, who could steer the ship of the State out of the moorings of economic and political chaos. Then, there was a restless nationalistic fervour throughout the country. It was at this psychological moment that Adolf Hitler appeared on the scene. He was skilful in playing with the emotions of the people and promised to destroy the much resented Versailles Treaty, secure military equality for Germany, repudiate reparations, expel the Jews who thrived at the misery of the Germans both during the War and after, suppress radical labour movements, provide employment for all, and take vigorous steps to pave down inequalities in the possession of wealth. Hitler's appeal was for all classes of population. Hungry people wanted employment and food. Labour needed work and security of employment. Landowners and the industrialists were in search of some one who could guarantee them their wealth in face of the spreading communistic ideologies and methods.

Hitler's movement, to start with, was known as the German Workers' Party. Next year it was named as the National Socialist German Workers' Party and later the National Socialist Party. The change in the party name was relevant to the needs of the time and psychology of the people. The National Socialist label was sufficient to enamour both the socialists and the nationalists. The Nazis, as then came to be known, rose to power partly by means of the violent acts of their "storm troops" and partly by adroit propaganda. Hitler was called upon by President Von Hindenburg to form a coalition government in November 1932; and this he refused. The invitation was again extended to him in January 1933, which he accepted. Hitler was appointed Chancellor with a cabinet of Nazis and members of the centre and old nationalist groups. But he secured the dissolution of **Reichstag** and elections were proclaimed to be held on March 5. A few days before the date of the elections a mysterious and disastrous fire had consumed the **Reichstag** building. This was held to be the feat of the Communists who, it was alleged, had flashed the signal for a general rising. It exasperated Hitler and his Nazi party. In opening the election campaign Hitler denounced the "crime of 1918", and unequivocally promised to destroy Marxism, Communism, and class warfare. He was an avowed opponent of parliamentary democracy as well and, accordingly, committed himself to end it and "find the way of reorganising the new unity of the German nation". He, also, pledged "to reawaken a popular veneration for the great traditions and to educate the Youth in reverence for the old imperial army as the emblem of the nation's greatest achievement".

In the confusion caused after the **Reichstag** fire President Hindenburg, on February 28, suspended many fundamental rights of the citizens

guaranteed by the Weimar Constitution, viz., articles prohibiting arbitrary arrest and imprisonment and guaranteeing private property, the sanctity of the home, the secrecy of private correspondence and freedom of speech, assembly, and association. It was in this atmosphere that the March elections were held which the Nazis and their Nationalist allies won by a slight majority of two per cent votes.

**The Structure and Policy of the Nazi State.** When the new **Reichstag** met on March 28, it gave blanket powers to the Nazi cabinet under Hitler, for a period of four years. It is from this date that the typical Nazi programme was put into operation. The accession to power of the Nazis was widely acclaimed by Italian newspapers "as a sign of the collapse of another democracy and as a vindication of the Fascist creed of strong and autocratic action". And the Nazis, too, had in aims and tactics approached nearly the Italian model. The government soon dissolved the Communist, the Socialist and other opposition parties. A law was made making the National Socialist Party or the Nazi Party, the only legal party in the country. Opposition newspapers were suppressed and the press, the radio, the theatre, and the cinema were placed under the control of Dr. Goebbels, Minister of Enlightenment and Propaganda. Thousands of political suspects were imprisoned or driven into exile and the Jews excluded from public life of the party and the government. The ideal of Nazism, one **Reich**, one people, one leader, was achieved.

Thus, in rapid strokes the Nazis achieved a totalitarian State. The story, however, was completed by the November 1933 general elections to the **Reichstag**. The Nazis secured 92 per cent of the total votes cast and on first December the National Socialist Party was incorporated into the machinery of the State. Soon after, the federal system of government was abolished and each unit of **Reich** was placed under the charge of Hitler's personal representatives vested with virtual dictatorial powers. Then, the Upper Chamber of the legislature at the centre, **Reichsrat**, was abolished. On President Hindenburg's death in 1934, Hitler became the President and the Chancellor combining into his person the supreme executive and legislative powers. The **Reichstag** was summoned occasionally and that too, for registering the decisions of Hitler. One single instance illustrates it. After the November 1933 elections, "the new all-Nazi **Reichstag** held a seven-and-one-half minute session for the sole purpose of electing officers. 659 Brown Shirts rose and sat down in unison when the Government's list was put to a vote, and, then, went obediently about their own business." This was the climax. Hitler, the Chancellor and Fuehrer, became the undisputed ruler of Germany. The Fuehrer spoke the first and the last word for the party and the government.

**Nazi Doctrine.** Nazism had no well-defined doctrine. It was not either a philosophy of the theory of the State or Government. It was just a movement which responded to a restless nationalistic fervour aroused by resentment over the terms of the Treaty of Versailles, although its appeal was in conformity with the political heritage of the Germans and their psychology. Hitler was an imperfectly educated man with no flare for philosophy and political theorising. He had probably never read in their original the writings of Hegel or Houston Chamberlain, yet "endowed with great native gifts" and trained in the methods of playing with the

sentiments and emotions, he preached valiant action and popularized veneration for the great national tradition.

When nation is glorified and the characteristic feature of the State is vigour and force, the obvious result is war. Hitler and his followers openly preached war. They extolled force and violence and had all praise for the man of the action. "He who would live," said Hitler, "must fight. He who does not wish to fight in this world has not the right to exist. Such a saying may sound harsh, but that is how the matter stands." The task of the universities was not to teach objective science, "but the militant, the war-like, the heroic". Nazism, therefore, preached and practised the gospel of the victorious sword and the principle of might as right. Hitler's theory of Vigour and Force was fully demonstrated in militarising Rhineland, by denouncing the Locarno Treaty and ultimately by conquering Czechoslovakia in 1938. Then, came subjugation of Poland by Germany and Russia in September 1939.

Hitler's Germany was an exclusive State. It meant two things. In the first place, it advocated the purity of race, the purity of language and the purity of literature. According to the teachings of Nazism "there are to be no more human beings in Germany, but only Germans". With this extreme nationalism of the Nazis may be connected an intense devotion to German paganism in religion and the theory that the German woman was considered valuable only as a breeder of pure Nordic children and the preserver of the Nordic race.

The exclusiveness of the State, in the second place, meant the achievement of economic self-sufficiency. Nazis emphasised economic self-sufficiency in the name of national unity and solidarity. Nazi economic policy was neither pure capitalism, nor socialism, because both the creeds divided the nation into hostile camps. General welfare was placed above private interests. The capitalists and the workers were controlled in the name of the State. Big and heavy industries were allowed to continue under private enterprise, but the scale and nature of production was determined by the State. The leader of the party decided what to produce, where to produce, and when to produce. Private determination and choice had nothing to do with it. Both the producers and consumers had neither any choice nor any preference. There was no separate organisation of the labour, and strikes and lockouts were strictly prohibited by law. Wages and prices were fixed. Commodities were controlled and rationed. Imports and exports were permitted with the government permission.

The Nazis did not glorify the State to the same degree as the Fascists. Hitler rejected Mussolini's idea that the State is "a spiritual and moral fact in itself". The State was not regarded as an end but as a means and its highest purpose was to preserve and promote racial unity, racial purity and racial development. The Nazis, therefore, transmuted in the *volk* or nation what they had denied to the State. They agreed to the dictum of Kant and Fichte that the individual possesses no rights but duties and the true freedom of the individual, they claimed, consisted in subordinating himself to the *volk* and working for its welfare. Nazi writers frequently spoke of the *volk* as a sort of metaphysical super-



natural entity having a spiritual reality apart from the existence of its members. Hitler always said that the individual is nothing *das volk* is everything. He ordained for the Germans three simple rules of conduct: duty, discipline and sacrifice. When the individual has no rights, no freedom of choice and no private initiative, it matters not whether the exaltation is that of the State or the *volk*. The results are the same. Hitler was the head of German nation as well as of the State.

Nazism is the antithesis of democracy. Democracy according to Hitler was a decaying corpse as it was "stupid, corrupt and slow-moving". Parliaments, it was maintained, were talking shops incapable of accomplishing results and at times of emergency they were absolutely helpless. Nazism, accordingly, did not tolerate political opposition and was hostile to individual liberty. Individual liberty was regarded as a fetish of the past. "The political parties," proudly declared Hitler in July 1933, "have now been fully abolished. This is an historical event of which the importance, and far-reaching effects have in many cases not yet been realized by all. We must now get rid of the last remains of democracy, especially of the method of voting and of the decision by majority....The (National Socialist) Party has now become the State." This is exactly what Mussolini had said and done.

The party, according to Nazi teachings, was the authorised agent of the dictatorship and the State. Both in Italy and Germany the principle of leadership from above was an established fact. It was the core not only of the constitution of the National Socialist Party, but also of its doctrines. Hitler was the head of the party, head of the State, head of the government, and, most important of all, head of the German nation considered as a racial community. Obedience to the leader was declared a sacred duty and it was rigidly enforced by the arts of discipline and propaganda. The ideal of "one Reich, one people, one leader" did not involve any question of how and why. Hitler definitely put it: Duty, discipline and sacrifice to be the watchwords of German citizens. Religion became worship of the Fuehrer. Professor Ernest Bergman wrote: "We of the German religion today turn to the ancient Nordic, Indo-Germanic Light-Hero figure and get rid of a false and diseased Christ picture created by the Christian Pope and Church to the hurt of humanity. The high priest of the new German paganism is Hitler himself. He is the real Holy Ghost. Hitler is lonely. So is God. Hitler is like God. Hitler is a new, a greater, and a powerful Jesus Christ."

The worship of Hitler was preached at the pulpit and school, the stage, the cinema, the radio and the press. "When the child returned home from school for lunch the parents greeted him with 'Heil Hitler', a phrase which the Germans used from 50 to 150 times a day." A Nazi school text-book which every German child was required to use, contained the following precious sentiment:

"Our Leader, Adolf Hitler,

We love you

We pray for you

We like to hear you

We work for you, Heil."

Leadership was, thus, far more in Nazi Germany than just a matter of authority from above. "It was the instrumentality through which nationality, State, and all political processes were fused into one. The national leader was hailed as the supreme embodiment of spirit and will of the people and hence the infallible head of their political system. Totalitarianism, therefore, acquired a sanctity in Germany that was never attained in Italy."

**Nazism, Fascism, and Communism.** It will be instructive to have a comparative study of Nazism and to know what makes it akin with Fascism and Communism and, at the same time, what are the main points of difference between them. It is true that the general conclusion and the general philosophy presented by National Socialism is something unique in Europe, but it has the element of the single party in common with the Communist Russia and with Fascist Italy. Then, it has some elements of social economic policy common with Fascism. Nazism, like Fascism, is based upon the executive eminence of power and responsibility, legislature having been reduced to a subordinate position just to register the will of the executive.

But, as said earlier, National Socialism is fundamentally unique. It is devoted to the ideal of a "closed" society, which is based on a peculiar and individual genius and stock. "It issues in a peculiar polity, expressive of that peculiar genius: it issues in a peculiar land self-contained economy which is similarly expressive." It was restoration of the old heritage of the directing leader and the old idea of a united *volk*. In its origin, the Nazi party mixed an old Nationalism with a non-proletarian Socialism. So far as it was National, it drew its followers from all, of whatever rank and station, who desired national renaissance. So far as it was Socialist, it appealed particularly to the peasantry, the small shop-keeper, and the lower middle class. Then, the party had a particular appeal to the young who had seen war service, and wished to preserve the best they had learnt in the war by cultivating the virtues of fellowship and heroism. From its beginnings "the Party called itself German (the German Workers' Party); and whatever elements it gathered—youth or aged, the lower middle class or the great industries—it remained essentially and fundamentally German". National Socialism was, thus, wedded to the people and the community. From this it proceeded to drive out foreign elements and concluded by conceiving German community as a native and natural race, which must above all things "preserve its racial purity, enhance its racial vigour and expand to its racial limits". This was the climax of racial unity and racial exclusiveness. The National Socialist Party made Germans a "closed" society when it preached that only the pure race could possess and transmit the true spirit. These teachings, in fact, set the old conceptions on a firmer and deeper foundation.

This aspect of National Socialism differentiates it not only from the democratic pattern of society, but also from the Communists and the Fascists. The democratic pattern, in spite of national differences, "has a common thread and design". Communism, too, is based upon a few common ideas. It emphasises the common interest of the workers in all countries and aims at the international revolution of proletariat. Even Italy could claim that the Fascist doctrine, and in particular its doctrine

and practice of corporativism, has a general appeal which could be advocated to others and adopted by them. "In a word, both Communism and Fascism are general alternatives; they are presented to the world at large; and if in the Italian view Fascism is an alternative produced by the Italian genius and peculiarly connected with Italy, it is nonetheless an alternative presented to the common choice."<sup>14</sup>

What Germany presents to others is simply Germany by itself and in itself; incorporated in two central principles of Nazi creed described by Carl Schmitt as the principle of Leadership (*Führung*) and the principle of Identity of kind (*Atgleichheit*). Both these principles have roots in the soil of Germany and are peculiar to the genius and traditions of the people. There is, therefore, nothing in Nazism which presents an alternative to other countries for their own internal choice. In the international sphere it preaches exclusiveness and does not offer any solution for the troubles of the world. In fact, Nazism perpetuated international animosity and aggressive warfare.

### SUGGESTED READINGS

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|-------------------------|---|
| Asirvatham, E.          | : <i>Political Theory</i> , Chap. XIII, pp. 447-72.                         |
| Barker, E.              | : <i>Political Thought in England from 1848-1914</i> , Chaps. I, III.       |
| Barker, E.              | : <i>Reflections on Government</i> , Chaps. XII, XIII.                      |
| Barnes, J.S.            | : <i>Fascism</i> .  |
| Bradley, F.H.           | : <i>Ethical Studies</i> , Chap.: <i>My Station and its Duties</i> .        |
| Brown, I.               | : <i>English Political Theory</i> , Chap. XI.                               |
| Coker, F.W.             | : <i>Readings in Political Philosophy</i> .                                 |
| Coker, F.W.             | : <i>Recent Political Thought</i> , Chaps. XV, XVIII.                       |
| Cole, G.D.H.            | : <i>A Guide Through World Chaos</i> .                                      |
| Cranston, Maurice (Ed.) | : <i>Western Political Philosophers</i> , pp. 91-98.                        |
| Davidson, W.            | : <i>Political Thought in England from Bentham to J. S. Mill</i> .          |
| Dunning, W.A.           | : <i>Political Theories from Rousseau to Spencer</i> .                      |
| Finer, H.               | : <i>Mussolini's Italy</i> .  |
| Florinsky, M.T.         | : <i>Fascism and National Socialism</i> .                                   |
| Follet, M.P.            | : <i>The New State</i> .  |
| Garner, J.W.            | : <i>Introduction to Political Science</i> , pp. 273-98.                    |
| Goad, H. E.             | : <i>The Working of a Corporative State</i> .                               |
| Green, T.H.             | : <i>Lectures on the Principles of Political Obligation</i> .               |
| Harmon, Judd M.         | : <i>Political Thought from Plato to Present</i> , Chaps. XVII, XVIII, XXI. |
| Hitler, A.              | : <i>Mein Kampf</i> .   |
| Hitler, A.              | : <i>My Battle</i> , tr. from the German (New York, 1933).                  |
| Joad, C.E.H.            | : <i>Introduction to Modern Political Theory</i> , Chaps. I, II.            |
| Laski, H.J.             | : <i>Authority in the Modern State</i> .                                    |
| Laski, H.J.             | : <i>Political Thought in England from Locke to Bentham</i> .               |



- Laski, H.J. : "*The Rise of Liberalism*," *Encyclopaedia of the Social Sciences*, Vol. I.
- Lloyd, Christopher : *Democracy and Its Rivals*, Part II, III.
- Lord, A.R. : *Principles of Politics*, Chap. XI.
- Merriam, C.E., H.E. Barnes, and others : *Political Theories; Recent Times*, Chaps. VI and VII.
- Mill, J.S. : *Essays on Government*.
- Mill, J.S. : *Representative Government*.
- Mill, J.S. : *On Liberty*.
- Mussolini, B. : *My Autobiography*.
- Mussolini, B. : *The Political and Social Doctrine of Fascism*.
- Parkinson, C.N. : *The Evolution of Political Thought*, Chaps. XIX-XXII.
- Rockow, L. : *Contemporary Political Thought in England*, Chaps. II, III, IV, X.
- Sabine, G.H. : *A History of Political Theory*, Chaps. XXX, XXXI.
- Schuman, F.L. : *The Nazi Dictatorship*.
- Stephen, Lo : *The English Utilitarians*.
- Veroker, Charles : *The Development of Political Theory*.
- Villari, L. : *The Fascist Experiment*.

## Theories of the Sphere of State Activity

— (Contd.)

### SOCIALISM

**Meaning of Socialism.** The word socialism appears to have been first used in the *Poor Man's Guardian* in 1833. In 1835, a society, which received the name of the Association of all classes of all Nations, was founded under the auspices of Robert Owen and the words **socialists** and **socialism** became current during the discussions which arose there. The term was soon afterwards borrowed from England by a distinguished French writer, Reybaud, in his well-known work, the *Reformateur moderne*, in which he discussed the theories of Saint Simon, Fourier and Owen. Through Reybaud it gained wide currency on the Continent and is now the accepted name for one of the most remarkable movements of the nineteenth century.

Socialism is the legitimate child of two great revolutions, the industrial revolution which had established itself in England towards the end of the eighteenth century and of the parallel revolution in thought which about the same time found most prominent expression in France. Robert Owen had grown up in the midst of the industrial revolution and he was deeply conscious of the enormous abuses of the factory system. He also knew the wonderful services that might be rendered by new technical improvements if only it were made subordinate to human well-being. Owen, thus, sought to bring the mechanism of the industrial system under the direction of the nobler principle, in which the good of all should be the great and sole aim. He advocated the organisation of co-operative villages, each village being a practically self-sufficient unit, where all would share in the prosperity of the community with none unemployed or in want. The impracticability of Owen's scheme of co-operatives was obviously clear, yet no one denied the nobility of his purpose. His dream was to release the individual from the repressions and perversions of competitive society and the creation of a society that would make an end of crime, poverty and injustice, a society in which the good in human nature could flower in full perfection and beauty.

If Owen had before his eyes the evils of industrialism, Saint Simon had before him the history of the hoary abuses of an idle and privileged feudalism. Revolution had, no doubt, fearfully shaken feudalism in

France, but it was still strong in Europe, and in France, as elsewhere, powerfully revived during the period after Waterloo. Saint Simon saw that a new world, an industrial world resting on labour had arisen while the old feudal and clergy classes steeped in ignorance and parasitic on society still ruled. Saint Simon sought to remove all this array of parasites by the industrial and scientific leaders as the real working heads of the people. What he exactly desired was an industrialist State. The men who are best fitted to organise society for productive labour should rule in it; substitution of the feudal aristocracy by a working aristocracy of merit.

The contrast between labour and capital, so much emphasised by later socialism, is not present in Saint Simon, but he assumed that in the organised society the industrial chiefs would not exploit the labour of others and rule in the interest of society. Later on, the cause of the poor received greater attention and in his book, the *New Christianity*, it became the central point of Saint Simon's teachings. "The whole of society," he wrote, "ought to strive towards the amelioration of the moral and physical existence of the poorest class. Society ought to organise itself in the way best adapted for attaining this end."

During the next stage in the development of Socialism, we see the influence of chiefly German and also Russian thinkers. Marx used the term **Communism** to denote his own theories in contradiction to the term **Socialism**. Marx and Engels gave expression to their doctrines in their celebrated **Communist Manifesto** (1848) and criticised socialism hitherto preached and advocated. Later, socialism of Owen and Saint Simon school came to be known as **Utopian Socialism** or **Utopianism** and the one which drew its inspiration from Marx as **scientific socialism** or merely **Socialism**. The term **Communism** denoted a distinct scheme of social reorganisation.

The term Socialism is derivative from the word **socius** which means society. Socialism is, thus, concerned with society and it is the injustice of the capitalist system that has inspired it. It is a reaction against the social and economic anarchy which the capitalist system had produced. It is a revolt against the exploitation by man of man and of child, in field, factory, mine and workshop. It is a protest against the building of an economic and social system on the incentive of profit not service. It is a challenge to competition which had degraded the working man and his family, starved many to keep a few in luxury, separated society into two classes—haves and havenots—and dragged mankind to perpetual conflicts and wars.

The socialist challenge to the existing order is therefore primarily moral, though its basis is economic. It is the assertion of the rights of the producing class which had never obtained a fair deal anywhere and in all stages of social evolution. At one time this class was chiefly made up of slaves, then, of half-free or nominally free agricultural labourers, and, finally, of industrial workers. This class, urge the Socialists, had always been excluded from the possession of land and capital, deprived of its share of the product of labour, denied the opportunities of effective participation in the affairs of the community, for political power without



its economic counterpart is only a delusion and a snare. No reform or change can be of any use, they argue, as long as there is no change in the system by which the few owned and controlled the capital, and the whole productive and distributive machine. The Socialists, therefore, propose that land and capital, which are the requisites of labour and the sources of all wealth, should be placed under social ownership and thereby secure a more equitable distribution of the means and appliances of happiness. There should be Socialism or social ruin, they conclude.

So far all the Socialists are agreed. But on the most important points of detail they differ very greatly. They differ as to the form society will take in carrying out the Socialist programme, as to the relation of regional and local governments to the Central Government, and whether there is to be any Central Government or any government at all. They are also sharply divided on the methods of achieving Socialism. Some expect it to come suddenly and completely with a catastrophic revolution, while others expect it to come slowly and gradually through the existing parliamentary institutions. The result is that there have emerged many schools of Socialism and each school has its own distinct philosophy, carries a separate name, and advocates the spread of its own point of view. And as the advocates of Socialism are numerous and the literature on the subject is enormous, varying according to the time and circumstances in which it appears, it is difficult to approve or condemn the movement of Socialism *en bloc*. Joad had rightly said that "socialism is like a hat that has lost its shape because everybody wears it". But the ideal of the Socialists is, whatever their variety, to remove poverty and privileges, vice and crime and other social evils from which society suffers today and to establish a new social and economic order where there will exist equal opportunity for all to flower to their best. As Spargo says, no definition of Socialism can be complete which does not consider it as (i) a criticism of existing society; (ii) a philosophy of social evolution; (iii) a social forecast or ideal; and (iv) the attainment of the ideal. The description of the Socialist ideal is provided by G.D.H. Cole. He says, "Socialism means four closely connected things—a human fellowship which denies and expels distinctions of class, a social system in which no one is so much richer and poorer than his neighbours as to be unable to mix with them on equal terms, the common ownership and use of all the vital instruments of production, and an obligation upon all citizens to serve one another according to their capacities". Socialism is, thus, an economic doctrine related especially to the economic ills of the industrial revolution. Its aim is to establish social justice.

**Marx's contribution to the theory of Socialism.** The greatest and most influential name in the history of Socialism is unquestionably Karl Marx. He and his celebrated companion Friedrich Engels are the acknowledged heads of the "scientific and revolutionary" school of Socialism, and to them is due the credit for the formulation of a coherent body of Socialist doctrine and the formation of the International Socialist movement which has continued to grow and spread throughout the world. They categorically condemned the capitalistic society and enunciated the philosophy of Socialism for a working man's movement.

(Karl Marx's thesis on Socialism is found in the **Communist Mani-**

festó, published early in 1848, and in the three volumes of *Das Kapital* or the "Capital", known as the "gospel" or "Bible" of the Socialists. The *Communist Manifesto* is the most widely read of all the Socialist documents and has been translated in almost every civilised language of today. It contains the clearest and most compact statement of Marx's conceptions of the past struggles between economic classes, the modern bourgeois-proletarian conflict, the inevitable present-day movements of its own destruction, and the programme of action working-men adopt in order to fit in their efforts with the actual march of events."

The most essential of Marx's doctrines may be reduced to three: (1) the materialistic conception of history, (2) the law of the concentration of capital, and (3) the class war. *Das Kapital* or *Capital*, the first and the most important volume of which appeared in 1867, and the other two volumes, edited by Engles, published posthumously in 1885 and 1894, adds a wealth of factual detail to the thesis of the *Communist Manifesto*. It contributed the theory of *Surplus Value* which explains the actual mechanism of capitalist exploitation. The theory of *surplus value*, according to Bertrand Russel, can hardly be defended as a contribution to pure theory. "It is rather to be viewed," he says, "as a translation into abstract terms of the hatred with which Marx regarded the system that coins wealth out of human lives, and it is in this spirit rather than in that of disinterested analysis, that it has been read by its admirers."

Marx's principal doctrines were not new. But he greatly amplified and systematized older ideas. He combined the scattered threads of all those ideas and gave them a logical, scientific, and effective exposition. His originality, however, is to be found partly in his appeal to the proletarian class, and partly in his call for organised action by the workers against their employers. His contribution, also, lies in his attempt to relate history with economic events and to trace the consequences of the evolutionary and revolutionary phases of socialistic action. He attempted to prove that a Socialist programme must be based upon a systematic interpretation of social evolution and a critical analysis of the existing system of production and exchange. More specifically his design was to show how a socialist community is to be built upon capitalist foundation. Although Marx professed to be proceeding in his discussions objectively and inductively, yet it must be confessed that all his writings were dominated by a clearly preconceived purpose of attacking the existing system of economic and political order. We now analyse Marx's doctrines.

*The Theory of Surplus Value.* The central point in Marx's thesis is his theory of *Surplus Value*. Here he derives his inspiration from the classical labour theory of value, primarily associated with the name of David Ricardo. Marx held that labour was the sole source of value. He agreed with the classical economists that the market value of a commodity depends on demand and supply, but in the long run the value of anything is determined by the labour and time spent on its production.

1. Bertrand Russel, *op. citd.*, p. 38.

2. Coker, *op. citd.*, p. 41.

Karl Marx defined commodities as congelation of labour and regarded value as "crystallised labour". The inclusion of labour in the commodity gives it value.) But the labour must be "socially necessary". This means two things. In the first place, labour must use instruments without which it cannot work. These instruments are factories, machinery, electric and steam power, etc. Secondly, the goods must be produced in such quantities that they can be easily marketed. If the market refuses to buy all the goods produced, then, the labour expended in the production of such goods is wasted.

Labour, says (Karl Marx, *further maintained that*), is a commodity and its value, too, is determined like any other commodity. That is to say, its value in exchange is fixed by the labour needed to produce and maintain it, or, in other words, it amounts to the commodities needed to support the labourer. (The worker must get wages sufficient enough to cover his expenses of maintaining himself and his family. But actually this does not happen in a Capitalist society and labourers get wages much below their subsistence level.) The reason is obvious. In the existing structure of society the instruments of production—machinery, tools and materials upon which labour can be performed—are owned by a relatively small class, called the Capitalist class, who are the employers. Labourers merely own their ability to work which they sell it to the capitalist and for which they receive wages. But the wages paid to them bear no proportion to the price which the commodity fetches. The Capitalist class knows that labour is a highly perishable commodity and it suffers from many other disabilities. (Labour's disabilities are the employer's advantages, because what is honey for him is a poison for the worker. By paying him less wages the employer increases his profits. The difference between the exchange value of commodity and the wage paid to the worker, Karl Marx calls, as the **Surplus Value**.) The Surplus Value (which ought to have gone to labour is appropriated by the Capitalist. It is, in fact, the product of unpaid labour and Marx characterises it as pure and simple exploitation.) In the **Communist Manifesto** Marx says, "For exploitation, veiled by religious and political illusions, it (bourgeoisie) has substituted naked, shameless, direct brutal exploitation."

(It was this exploitation of labour which Karl Marx sought to remove. The modern State, in his opinion, is a tool in the hands of the Capitalist class and they use it to protect and perpetuate their vested interests. The only way to put an end to these conditions, according to Marx, is to destroy all opportunity for private enterprise and free competition. This can be achieved only under a Socialist society, "where collective capital will replace private capital, both capitalists and wage-earners disappear, and all persons become co-operating producers".)

② **The Materialistic Conception of History.** Marx, then, proceeds to enquire how the Capitalist society came to be organised. He finds his explanation in history and gives to his doctrine the name of the Materialistic Conception of History. According to this doctrine all the phenomena of human society have their origin in material conditions of life.) "Legal relations as well as forms of State," said Marx, "could neither be understood by themselves, nor explained by the so-called general progress of the human mind, but they are ~~are~~ rooted in the material conditions of life, ...



The mode of production in material life determines the general character of the social, political and spiritual process of life. It is not the consciousness of men that determines their existence, but on the contrary, their social existence determines their consciousness." (The political institutions of every country, its social structure, trade and industry, art and philosophy, and the customs, manners, traditions, law, religion and morality, all are influenced and shaped, according to Marx, by the material conditions of life. By material conditions of life he means environment, production, distribution and exchange; production being the most important of all.) "Thus to each stage of economic production there corresponds an appropriate political form and an appropriate class structure." Marx's philosophy, therefore, is a theory of history setting forth the natural phase of evolution.

He applies his doctrine in particular to two revolutions, one in the past, the other in the future. The revolution in the past was that of bourgeoisie against feudalism and it found its expression, according to Marx, in the French Revolution. The one in the future, is the revolution which Marx predicts, the revolution of the wage-earners or proletariat against the bourgeoisie in their bid to establish the Socialist Commonwealth. "The weapons with which the bourgeoisie felled feudalism to the ground are now turned against the bourgeoisie itself. But not only has the bourgeoisie forged the weapons that bring death to itself, it has called into existence the men who are to wield those weapons—the modern working class, the proletariat."

(The Industrial Revolution brought into existence two distinct classes: a small privileged class, the owners of the means of production, and large propertyless proletariat. There had been <sup>many</sup> employers and workers before and even small-scale capitalists but the peculiar features of the modern Capitalist society are the dominance of the Capitalists as a class, the organisation of the State in such a way as to give expression to this dominance, and a constant and never-ending conflict between the capitalist and the proletariat.) The Capitalist class controls the machinery of the State and occupies all key positions in the government. The laws of the State are so made and policies of the Government are so formulated as to safeguard and enhance their interests. In fact, the whole machinery of Government functions to the advantage of the Capitalist as a class and they use it to fortify their liberty of ruthless exploitation. Karl Marx, thus, bluntly concludes: "Does it require deep intuition to comprehend that man's ideas, views, and conceptions, in one word, man's consciousness, changes, with every change in the conditions of his material existence, in his social relations, and in his social life?"

**The Law of the Concentration of Capital.** Marx, then, proceeds to show how capital becomes concentrated into the hands of a handful of people. Marx pointed out that capitalist undertakings tend to expand. He foresaw the substitutions of trusts and cartels for free competition, and predicted that the number of capitalist enterprise must diminish as the magnitude of a single enterprise grows through, what we call, rationalization of industry. With the diminution in the number of businesses as a result of monopolisation the number of the capitalists, too, diminishes and capital comes to be concentrated in the hands of few capitalists.

Marx, indeed, "usually spoke as though each business were owned by a single man." The capitalists thrown out of their business, as a result of this process of concentration and monopolisation, would naturally join the ranks of proletariat. "Our epoch, the epoch of bourgeoisie," says Karl Marx, "has simplified the class antagonisms. Society as a whole is more and more splitting up into two great hostile camps, into two great classes directly facing each other: Bourgeoisie and Proletariat." When the capitalists grow numerically weaker, less in number, that heralds their destruction. "All previous historical movements," according to Marx, "were movements of minorities. The proletarian movement is the self-conscious, independent movement of the immense majority, in the interests of the immense majority."

Marx applied the principle of the law of the concentration of capital not only to industry but also to agriculture. He predicted the land-owners to become fewer in number while their estates grew larger and larger. This process would make more glaring the evils and injustices of the capitalist system and consequently strengthening the power of the opposition.

**The Class War.** In every age, Marx maintained, the differing modes of acquiring means of subsistence divide men into separate groups and create within each group special group consciousness. This group consciousness created by the affinity of economic interest makes them a community of interests the bonds of which are more enduring and give rise to class struggles. The existence of a class war is, therefore, nothing new. "The history of all hitherto existing society is the history of class struggles." (For a historian, history is warfare between nations, but for Marx it is a revolutionary struggle between classes.) In these struggles the fight "each time ended either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classes." (All social changes, appeared to Marx, to have been determined chiefly by economic class struggle) and the history of humanity was the history of class conflict. Every system of production, he says, has given rise to two opposing economic classes—the exploiters and the exploited, the owners and the toilers. "Freeman and slave, patrician and plebeian, baron and serf, guildmaster and journeyman, one word, oppressor and oppressed, standing constantly in opposition to each other, carried on an interrupted warfare, now open, now concealed."

Society is dynamic; it changes and evolves. The capitalist society must as a result of this evolution, ultimately pass away and be succeeded by another. The capitalist and the system of capitalism generates seeds of their own destruction. For some time the proletariat class would continue toiling, fretting and fuming till ultimately they become desperate and unite to overthrow the capitalist class. Revolution follows, as a result of which the proletariat seizes power. This sequence is inevitable and invariable and can end in no other way. The dictatorship of the proletariat is bound to come and when it comes, it takes complete control over the economic functions of society by expropriating the private capitalist and by appropriating the means of production. Society, thus, passes into socialistic stage through a revolution determined by the natural laws of evolution.

Socialism is, thus, a result determined by the inherent laws of social evolution, independent of the will and purpose of individual men. "And that the most powerful and clear-sighted intellect can do is to learn to divine the laws of the great movement of society and to shorten and alleviate the birth pangs of the new era. The efforts of reactionaries to turn the wheel of history backwards are in vain."

The Socialist society which emerges from the proletarian revolution will be a classless society. All land and capital shall be owned in common, exploitation will cease, the tyranny of the owners of wealth will no longer be possible, and all men will be free. The Communist Manifesto ends with an appeal to the wage-earners to rise on behalf of Communism. "The Communists disdain to conceal their views and aims. They openly declare that their end can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win. Working men of all countries unite."

### COLLECTIVISM

**What is Collectivism.** Collectivism or State Socialism is one of the varieties of Socialism. It is a reaction against the extreme Individualism of the nineteenth century and refers to that school of thought which regards the State as a positive good and holds that its mission is to promote the common economic, moral and intellectual interests of the people as a whole. The central idea underlying Collectivism is that if the mass of the people are to rise above the level of wage slaves, they would have to be protected against the evils of free competition by a greater measure of interference with and regulation of industry by government as a representative of the community with a view that ultimately all means of production and distribution are collectively owned. "A socialist," Professor Ely says, "is one who looks to society organised in the State for aid in bringing about a more perfect distribution of economic goods and an elevation of humanity."

**Collectivism analysed.** According to the Collectivists the existing political organisation discloses several defects. It assures the happiness and comfort of the few and suffering of the many. The fate of the masses is their poverty in plenty. "It is always tragic," remarks Mrs. Barbara Woottan, "to starve and to be desperately poor or to have nothing to do. But to starve in the midst of plenty is ridiculous as well as tragic and to starve because of plenty is more ridiculous still. Equally it is ridiculous to have nothing to do when there are things which evidently require to be done and when plants and materials necessary for doing them are waiting to be used." And, then, it secures apparently political freedom for all without securing to them economic freedom. Without economic freedom the submerged masses remain just as submerged as before. They are held in bondage by sacred individual rights, because, as Maxey says, "economic overloads displayed an odious ability to gain control of political authority and use it to fortify their liberty of ruthless exploitation."

It is this order of society which the Collectivists are out to reverse.



They demand that the power and authority of the State should be used to limit the free exercise of the sacred right of contract, the sacred right of property, and other hallowed concepts of the eighteenth century. For them body politic is an organism and the State is the best medium through which exploitation, degradation and starvation of the masses can be removed and equality of opportunity provided to all. "In any society," Lindsey says, "political organisation is necessary because common action is necessary to repair the disorganisation caused by the fact that men act independently and yet affect one another by such action." The Collectivists, thus, believe in the necessity of the State and regard it as a supreme and positive good, an instrument which provides conditions of social welfare ensuring social justice.

The new social order which the Collectivists envisage is not to be brought about by catastrophic or revolutionary methods. The transformation of society is to be slow, gradual and peaceful. Society, they urge, should be permeated with socialistic ideas by education and propaganda. Those who subscribe to the creed of Socialism should be returned to the legislatures and public opinion should urge the adoption of legislative and administrative measures embodying socialistic objectives. When majority of the socialists is secured in the representative assemblies, then, they would be able to establish the control by the community of the instruments of production and distribution. The Socialists believe in the ultimate readiness of the possessing class, the capitalists, to yield, both because of the justice of the workers' claim and because of their inability to resist with any hope of success the overwhelming predominance of numbers.

The Collectivists would achieve their objective:

(1) by abolishing private ownership of the means of production and consequently to bring important industries and services under public ownership and control;

(2) industry to be carried on for the purpose of ministering to the needs of the community, and not with the object of making profits for individuals. The quality and quantity of the commodities produced is to be determined by considerations of social need; and

(3) the motive of social service to be substituted for incentive of private profit.

There is, thus, a sharp difference between the Collectivists or the State Socialists and the Scientific Socialists, the disciples of Karl Marx, or the Communists. The State Socialists are opposed to revolution as a means of attaining social democracy whereas Marx had advocated it as the only alternative for overthrowing capitalism. They also view with alarm the Dictatorship of the Proletariat because force is its *raison d'être*. It is to be invested with oppressive and autocratic powers in order to destroy capitalism and construct socialism. When force becomes the criterion of political authority; it makes no difference whether it is the dictatorship of the proletariat or dictatorship of the individual. Collectivism appeals to reason and its instruments are education and propaganda. It aims at slow, gradual and peaceful transformation of society. While the State Socialists have confidence in the State as a matter of principle, the

Scientific Socialists accept it only as transitory phase which will "wither away" when capitalism is destroyed completely. Finally, the State Socialists do not subscribe to the theory of world-wide revolution. They believe that it is by constitutional means that the ultimate goal of social democracy can be attained in all lands.

**Arguments in favour of Collectivist control.** The Collectivists argue that nationalisation of industry is the only effective method of replacing the capitalist system. It ends competition, the primary source of all economic and social evils. Surplus value is the beginning, middle, and end of capitalism. It is the surplus value which the capitalist appropriates and it is the keynote of the social tyranny. Socialisation of industries enables the State to appropriate surplus value and socially created values and consequently bring the downfall of capitalism.

The collectivists deny the individual ownership of the free gifts of nature, like land and mines. These are limited in supply and if left to individual ownership, he would exploit them for self-interest sacrificing national interests and for his immediate gain jeopardising the future social interests. It is not even distributive justice, the Collectivists urge, that the few should appropriate the free gifts of nature to the detriment of the predominating majority. Justice demands that they should be owned by the State on behalf of the community and exploited for the benefit of the community.

State management of industries, the Collectivists maintain, makes available to society those goods and services which are socially needed, but for which there does not exist sufficient demand. Moreover, Socialism aims at substituting the motive of social service for the motive of private profit. In a capitalist society, they assert, every individual is a competitor, prompted by his own self-interest without any regard to the interest of others. This mad competitive race degenerates man and demoralises society. But elimination of competition and private ownership of the means of production would bring about a psychological change in the outlook of the people. Their incentive will be social service and social welfare. A Socialist government will, accordingly, be incorruptible. There will be no temptation to enrich an individual self. The finer side of human nature is stimulated and the best self of man guides the individual and society.

Socialism, the Collectivists urge, is the complement of democracy. Democracy, they emphasise, is a sham affair if there is no equality in the distribution of wealth and opportunity. More than three quarters of a century ago Matthew Arnold wrote, "The one insuperable objection to inequality is the same as the one insuperable objection to absolutism: namely, that inequality, like absolutism, thwarts a vital instinct and being thus against nature is against humanization. On the one side inequality harms by pampering; on the other by vulgarizing and depressing. A system founded on it is against nature, and in the long run breaks down". The demand for equality is the basis of Socialism. It holds that liberty is not worth having without the security equality provides. Socialists, accordingly, argue that economic democracy must precede political democracy. The Collectivists stand to realize this social transformation through the agency of a democratic state.

Not merely capitalism is accused of being unjust in its distribution of rewards for work, not merely does it fail to give that security which is the distinguishing mark of an efficient economic system, but it is callous in its disregard of human happiness. It produces ugly articles under ugly conditions. A sudden unprecedented decline in arts coincided with the introduction of machinery, division of labour, standardization and mass production. All these factors stifled the instincts of the craftsmen to take pride in their work. When a worker has nothing to do but to turn a handle as the needle points in a certain direction, he cannot be expected to take an interest in what he produces. And when he is condemned to live in a slum for his pains, or to stand at a corner street for weeks on end because his labour is not needed, no wonder he feels frustrated and revolts against the existing order. Under the conditions of modern industry the workman ceases to be a human being, he becomes a mere cog in the machine. It is this danger of creating a society in which "wealth accumulates and men decay", that the collectivists are determined to reverse and substitute in its place a social order in which shall prevail justice and happiness.

### FABIANISM

**Origin and meaning of Fabianism.** The principles of Fabian Society from the basis of British Socialism. In January, 1884, a band of young reformers in Britain, prominent among them were Sidney Webb, George Bernard Shaw, Sydney Oliver, Graham Wallas, Mrs. Annie Besant, Headlam, Pease and, for a short time, H. G. Wells founded the Fabian Society with a view to spread Socialism and to persuade the national and local governments of Britain to put the doctrine gradually into practical operation. The Society adopted the name Fabian after Fabius Cunctator, the Roman General, whose tactics they, thus, defined: "For the right moment you must wait, as Fabians did patiently when warring against Hannibal, though many censured his delays; but when the time comes you must strike hard, as Fabians did, or your waiting will be in vain, and fruitless."

The Fabians in Britain were to adopt the methods of the Roman General for the achievement of their goal of Socialism. The Fabian Society did not direct its appeal to any particular class, but to men and women of all classes who saw the evils of capitalist society and desired their removal. It endeavoured to rouse social compunction by making the public conscious of the evil condition of society under the capitalist system. The Fabians were not revolutionary Socialists and they did not outright condemn capitalism or identified it with "exploitation". They were empirical in their outlook and their methods aimed to change the social structure by a slow and gradual process through the agency of a democratic State and by constitutional means. "The Fabians," Bernard Shaw said, "agreed to give up the delightful ease of revolutionary theories and to take to the hard work of practical reform on ordinary parliamentary lines."

**Programme of the Fabians.** The Fabians are not the followers of Karl Marx and they reject his doctrines of materialistic conception of history and of economic determinism. Nor do they believe in the inevi-



table, automatic and scientific process by which a social revolution would come of its own accord. They were influenced particularly by the doctrines of Henry George, the various British interpretations of Karl Marx, the developing of Collectivism in John Stuart Mill's exposition of his individualist doctrines, and the implications in the philosophy of T. H. Green. They were struck with the obvious fact of the existence of poverty among the masses and the concentration of land and industry in the hands of few land-owners and industrialists deriving huge fortunes without any effort on their part. In a manifesto, prepared by Shaw and adopted by the Fabian Society in September 1884, is contained its policy and programme. The manifesto said:

(1) "It therefore aims at the reorganisation of society by the emancipation of land and industrial capital from individual and class ownership, and the vesting of them in the community for the general benefit. In this way only the natural and acquired advantages of the country be equitably shared by the whole people."

(2) "The society accordingly works for the extinction of private property in land and of the consequent individual appropriation, in the form of rent, of the price paid for permission to use the earth, as well as for the advantages of the superior soils and sites." In brief, the Fabians argued that the rent for the unearned increment in the value of land is no right of the landlord. It is society's need of land which has made it valuable and consequently increase in its rent. This, to begin with, should be transferred from the landlord to the community. The possessors of the more fertile land or land in a superior location derive huge incomes solely by virtue of possession and not by virtue of service.

(3) "The society, further, works for the transfer to the community of the administration of such industrial capital as can conveniently be managed socially. For, owing to the monopoly of the means of production in the past, industrial inventions and the transformation of surplus income into capital have mainly enriched the proprietary class, the worker being now dependent on that class for leave to earn a living."

(4) "If these measures be carried out, without compensation (though not without such relief to expropriated individuals as may seem fit to the community), rent and interest will be added to the reward of labour, the idle class now living on the labour of others will necessarily disappear, and practical equality of opportunity will be maintained by spontaneous action of economic forces with much less interference with personal liberty than the present system entails."

(5) "For the attainment of these ends the Fabian Society looks to the spread of socialist opinion, and the social and political changes consequent thereon, including the establishment of equal citizenship for men and women. It seeks to achieve these ends by the general dissemination of knowledge as to the relation between the individual and society in its economic, ethical, and political aspects."

Fabianism is, thus, based upon the actual experience of the pitiable plight of the masses and the degrading lot to which they are subjected rather than reliance on any well defined theory of Socialism. It is concerned with a more just distribution of income and the reconstitution of

society in such a manner as to secure the general welfare and happiness. The Fabians reject the thesis of Marx that there is a perpetual conflict or class war between those who work for wages and those who employ wage-workers. Ramsay MacDonald declared in 1893, "The watchword of Socialism is not class-consciousness, but community consciousness." The conflict is, thus, between the community, on the one hand, and those who grow rich through investments, on the other hand. "The individuals or class who possess social power have at all times, consciously or unconsciously, made use of that power in such a way as to leave the great majority of the fellows practically nothing beyond the means of subsistence according to the current living standard. The additional product, determined by the relative differences in productive efficiency of the different sites, soils, capitals, and forms of skill above the margin of cultivation, has gone to those exercising control over these valuable but scarce factors. This struggle to secure surplus of "economic rent" is the key to the confused history of European progress and the underlying unconscious motive of all revolutions."<sup>3</sup>

The object of Socialism, as the Fabians thought it, is to obtain for all members of the society the values which society creates. This object is to be achieved by gradually transferring land and industrial capital to the community. But such a transformation does not involve a violent change. A catastrophic change is foreign to the Fabian creed. Any kind of violent change, even if necessitated by the stress of circumstances, would fail to achieve the desired results, the Fabians assert.

For the Fabians the State must be fully representative of the community, if it could be "trusted with the rent of the country, and finally with the land, the capital and the organisation of the national industry". They regard the State, with a perfected machinery, the representative and trustee of the people, "their guardian, their men of business, their manager, their Secretary, even their stock-holder". They believe that the existing State could be made without radical transformation "if not absolutely perfect, at least trust-worthy". And to make it so the immediate reforms the Fabians advocate are: broadening of the suffrage, a better trained civil service, and provision for equal educational opportunities for all. They also advocate democratization of the source of power and consequently decentralization of authority and making local bodies the vital centres of governmental activities. It was, as such, proposed that the House of Commons might deal with national problems alone, leaving local questions to the jurisdiction of the municipalities so that the House became "merely the organ of federated municipalities".

The object of the Fabians was, therefore, to persuade the nation to make their political constitution thoroughly democratic, and to socialise their industries as to make the livelihood of the people entirely independent of capitalism. The Fabian society enjoined upon its members that, instead of keeping aloof from other bodies, they should join them and permeate them with Fabian ideas. "Almost all organisations," according to their belief, "contained elements making for socialism". The

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3. "English Progress Towards Social Democracy." *Fabian Tract*, as quoted in Coker, *op. citd.*, p. 150.

Fabian Society, to sum up, was constitutional in its attitude, and its methods were the same familiar and usual methods of political life in Britain. It stood for democracy, which meant simply the control of administration by freely elected representatives of the people. Socialism, as understood by the Fabians, meant the organisation and conduct of the necessary industries of the country, and appropriation of all forms of economic rent of land and capital by the nation as a whole, through the most suitable public authorities, parochial, municipal, provincial or central.

The great merit of Fabianism lies in the concrete proposals which it devised "for diffusing more equitably the advantages of modern industrial civilisation by raising the economic and civic status of wage-earners and paring down the fortunes of property-owners." They worked out definite and attractive schemes for immediate application like: (1) "Social Legislation" embracing shorter hours of work, security against unemployment, minimum national wages, minimum standards for health and safety, improved educational facilities, etc.; (2) public ownership, national or municipal, of public utilities and natural monopolies; and (3) taxation of inheritances, ground rents, and investment incomes.

There had been deep affinity between the Fabian Society and the Labour Party in Britain since World War I. In fact, the Fabian Society was the intellectual backbone of the Labour Party. Five members of the society, including two authors—Sidney Webb (later Lord Passfield) and Sydney Oliver—of the original *Fabian Essays*, were members of the first British Labour Government in 1924. Webb was also Secretary of State for the Dominions and for Colonies in the second Labour Government in 1928. The society is extinct now.

### SYNDICALISM

**Syndicalism Explained.** The late nineteenth century witnessed in France the rise of Syndicalism. The word Syndicalism is derived from *syndicat*, the ordinary French term for labour union. It may be defined "as that form of social theory which regards the Trade Union organisations as at once the foundation of the new society and the instrument whereby it is brought into being". The important exponents of Syndicalism are Georges Sorel and Pelloutier.

The Syndicalists accept the general Marxian thesis that society is divided into two opposing classes, the employers and the employees, whose interests are conflicting. The modern State, they hold, is a class State dominated by the capitalists. They also accept the doctrine of class struggle as a fundamental characteristic of the capitalist society and regard the institution of private property as the root cause of all social evils. The State, the Syndicalists maintain, perpetuates the interests of capitalists and it should be eradicated. But they reject the Marxian idea that the workers could use the State, through the dictatorship of the proletariat, to accomplish their purpose. The Syndicalists, in fact, had a deep antagonism for the State in any of its form and rejected it outright. In its place, they proposed a society organised into trade unions or *syndicats*. They suggested that most problems could be solved by local *syndicats*, and that a national system of *syndicat* affiliations could administer



affairs which transcended the local level. Syndicalism, thus, aimed to abolish private ownership of capital and to substitute it by collective capital owned by the community. It was to be a producers' commonwealth in which industries governed themselves. Instead of a political state there was to be a co-ordinating body elected out of the syndicates. To achieve their end the syndicalists advocated a programme of direct action, including the use of violence.

Syndicalism is genuinely a working class movement guided and controlled by the workers themselves through the trade unions. The Syndicalists have a deep distrust of the middle class Socialism. They claim to be the "only school of Socialist doctrine which is the product of the workers themselves; all other forms of Socialism have emanated from the brains of clever middle-class theorists, and betray their origin. They show a tendency to regiment the workers in conformity with some pre-arranged system of society which has seemed good to a clique of intellectuals," who are out of touch with the workers and their needs. It is the workers alone who can really and adequately express their needs. "The importance of keeping alive an intense class consciousness further forbids any *rapprochement* between the workers and the intellectuals of the middle-class, even when the latter are favourably disposed, as inimical to revolutionary ardour."

Socialism, they further urge, involves nationalisation, which would preserve, and, indeed, add to the hierarchy of officials who control and manage business or industry, and the real emancipation of the wage-earner would be as far off as ever. Moreover, in order to achieve nationalisation, or even to work towards that end, the Socialist forces have been obliged to organise themselves into a political party. Any political party, the Syndicalists maintain, which participates in parliamentary action is bound to make compromises and follow the principle of give and take thereby softening down the rigour of its revolutionary principles. A political party, they further urge, is a much less efficient instrument of action than a "class". The cause of the workers can best be served, if they organise themselves into independent, self-governing unions of producers, keep alive class-consciousness in its keenest and most uncompromising forms and bring the battle to its triumphant goal, the General Strike. The General Strike is not to bring some concessions. It is to be a proletarian general strike led by the workers for the revolutionary end of the reconstruction of society. "The task of revolution," as Pelloutier said, "is to free mankind not only from all authority but also from every institution which has not for its essential the development of production." All authority in the economic and industrial sphere will flow to the workers in a stateless society established after the revolution.

**Hostility against the State.** The Syndicalists regard the State as essentially a bourgeois or middle-class institution whose main task is to defend and safeguard the interests of this class. They endorse the Marxian condemnation of the State as an instrument of capitalist exploitation. The State will retain its character, the Syndicalists argue, whatever be the form of the social organisation in which it exists. Just as a leopard cannot change his spots, so the State cannot change its bourgeois character. It is asserted that service under the State makes men bureaucratic and

unsympathetic to the needs and aspirations of the workers, who are engaged in the actual work of production. "A central organisation tends to uniformity, to routine, to lack of imagination, and to distrust of local development and enterprise. Even a benevolent State, therefore, the Syndicalists maintain, would, if left in control of industry, be inimical to progress." It cannot know nor it cares to know what exactly the needs and aspirations of the workers are. It is only the workers themselves who know what their needs are and how these may be met.

Moreover, the State represents the consumers of labour only and not the producers of value. The authority and power of the State is the power of the consumers of labour, the employers. The State which safeguards the interests of the consumers cannot and would not be the guardian of the producers. By abolishing the State, the Syndicalists aim at installing labour in the position of authority. They demand the organisation of each industry under the workers of that industry. Finally, the Syndicalists attack the very basis of the State as it embodies an impossible ideal of social unity. Society, they argue, is essentially pluralistic and no political constitution can make it otherwise. In this way the doctrines of Syndicalism have been drawn from Marxian Socialism, Anarchism, and Pluralism.

**Syndicalist Structure of Society.** Regarding the structure of the Syndicalist Society there is vagueness. The Syndicalists are more concerned with the methods of getting rid of the existing structure of society than with the ways of social affairs after the success of their movement. They do not, indeed, consider it worth their while to work out the future organisation of society. Their widespread belief is that the new social organisation will develop automatically when workers assume control of the factors of production and private capital is replaced by the collective capital. Sorel and Berth have maintained that "any attempt to depict the details to the future order would dispel those visionary institutions in which lay the chief power of Syndicalism". Syndicalism offers, therefore, a policy of revolution, not of administration.

The only attempt to set forth fully the organisation of future Syndicalist society is found in the book of Patvad and Pouget, **How We Shall Bring About The Revolution**. According to the joint authors of this book, the ordinary functions of management will rest with the local industrial unions. These unions will have possession of buildings, machinery, and equipment in the several industries and will exercise immediate direction of production and execution of policy. The national services, like post offices, railways, highways, etc., will be assigned to the national federations of workers. There will be other national federations to supply technical information and expert advice to the local bodies. Finally, there will be a national body, like the existing C.G.T. (**Confederation General du Travail**), entrusted with the function of deciding matters that demand uniform treatment all over, such as the determination of wages, the length of normal hours of work, the care of children, the old, and sick.

The authors of the scheme recognise the necessity of certain disciplinary sanctions against the anti-human and anti-social acts of the members of the Syndicalist society. But these sanctions will be of a distinctive kind, as compared with the coercive authority of the State. Each Union will pass judgment upon any of its recalcitrant members. It may decree a moral punishment, like the boycott or in extreme cases the guilty person may be remanded to a general meeting of the unions where a sentence of banishment may be imposed. More heinous "offences will be spontaneously dealt with through acts of summary justice inflicted by eye-witnesses. Prison and court houses will, however, be abolished, for crime will decrease in number because there will no longer be any occasions for anti-social acts caused by misery, inequality, or the evil deeds of capitalism; and the better social environment will tend to eliminate the offences that result from physiological defects and mental disease."<sup>5</sup>

The necessity of proper defence against any contingency of foreign aggression is duly admitted. Syndicalist policy, they explain, is not "the resignation and non-resistance preached by Tolstoy."<sup>6</sup> But the defence arrangements will differ fundamentally from those existing in the modern States. There will neither be any paid army nor offensive armaments. In each union of the Syndicalist society there will be an armed militia equipped with purely defensive arms.<sup>7</sup>

As already said, most Syndicalist writers regard any comprehensive picture of the future organisation of society as futile and an untimely attempt. But it will be a Stateless society with its characteristic feature of extreme decentralization. Local workers will form syndicates according to their trades and these syndicates would perform local police and judicial services. National federations of syndicates would collectively own the capital of society.

A pertinent question arises here. Are the syndicates competent by themselves to take over the organisation and control of so elaborate a concern as is a modern industry? It is really utopian to expect that a catastrophic Revolution, following a successful General Strike, would find the syndicates fit to assume the great responsibilities which would be placed upon them. But Lagardelle makes the prophecy that "all the noble feelings which patriotism calls forth—heroism, self-sacrifice and unflinching obedience—the qualities which form the eternal foundations of life—will not cease to exist but, on the contrary, will continue to grow in the soul of the workers who are filled with the revolutionary spirit".

**Methods of Syndicalism.** The Syndicalists advocate direct methods of action to rouse the revolutionary spirit in the workers in order to bring about the desired changes in society. They are distrustful of constitutional methods, because of their bias against the State. For success in achieving their mission, they insist on intensification of class consciousness till the time of General Strike when the "halt" of the capitalistic system will come. This is to be done through trade unions. The Syndical-

5. *Ibid.*, p. 244.

6. Joad, C.E.M., *Introduction to Modern Political Theory*, p. 69.

7. *Ibid.*



ists believe that workmen are imbued with a greater sense of solidarity in the industrial sphere than their cohesion as exhibited in political life. They deprecate political parties. A political party, they say, "is a poor revolutionary weapon; it is dispersed, it meets rarely, and it is apt to be too large to afford a direct expression of the common will"

The Syndicalists would establish a network of efficient organisation of the trade unions by crafts and industries and charged with the duty of pursuing programme of continued agitation for better wages and shorter hours of work. Such an agitation makes the workers conscious of their exploitation. The workers would also be required to go on occasional strikes to keep up enthusiasm and discipline in their ranks and, infuse in them a sense of solidarity. Any kind of strike, it is maintained, whether local or national, successful or partially successful, is important and vital in preparing the workers to be ready for the General Strike. Strikes are, the Syndicalists emphasise, part of the general revolutionary movement, daily acts of revolutionary practice, and from them will evolve in time a complete Revolution. "Every strike", as Cole remarks, "is more or less general, and the same conception embraces them all: from the petty strike in a single workshop to the local, regional, national and international general strikes, all are touched with something of the glamour which attaches to the one great 'Social General Strike', in which is envisaged the complete overthrow of capitalist society."

The General Strike may not be a strike of all the workers in a country. By General Strike the Syndicalists mean a strike on the part of the sufficiently large number of workers employed in the key industries which may paralyse the whole economic life of the country and bring the capitalist system to an end. To be ready for the General Strike, it is essential that the workers must carry out a policy of perpetual offence by adopting methods of sabotage, boycott, the label and *ca'canny* practices. Through all such methods of direct action the proletariat expresses its will to conquer. The Syndicalists, thus, believe in the principles of violence in policies and Georges Sorel was one of the leading exponents.

**Difference between Syndicalism and Socialism.** The chief difference between Syndicalism and Socialism lies in the insistence of the former on entrusting the control of industry to the producers, i.e., workers. The Socialists, on the other hand, will vest this control in the State which is the repository of the interests of the producers as well as the consumers. Secondly, Syndicalists hold that the workers, as producers, should exercise control not only in the industrial sphere, but also in the political sphere. Their object is to create a Stateless society. The functions of the State are to be taken over by *syndicats* of producers organised on a vocational basis. The Socialists will continue with the State as they deem it a positive good and "the representative and trustee of the people". Thirdly, Socialism aims to end capitalism, because the institution of private property and the policy of *laissez faire* are detrimental to the good of society as a whole. Its object is not the good of a particular class, but the happiness of all. Syndicalism champions the cause of a particular class, the producers of values, that is, workers. In this respect, Syndicalism certainly tries to do what Socialism tries to avoid. The workers will

dominate the Syndicalist Society. Max Nordau remarks "that though Syndicalism may be said to arise out of Socialism, Syndicalism is the very antithesis of Socialism."<sup>8</sup> Fourthly, Socialism begins with its own philosophy and ideas and develops the socialistic organisation in the light of those ideas. Syndicalism, on the contrary, begins with the existing organisation of trade unions and develops ideas appropriate to it. Fifthly, Socialism has an appeal to general public opinion, but Syndicalism has an appeal to the opinion of the workers only. Finally, the methods of Socialism are constitutional. The methods of Syndicalism are direct and revolutionary. It endeavours to paralyse administration both politically and industrially. Bertrand Russel calls Syndicalism as "Organized Anarchy".

To sum up, the Syndicalist movement is pre-eminently revolutionary, the socialist movement is reformist. Syndicalism puts itself deliberately outside the present system of society in order to get hold of it firmly and to shake it to its very foundation whereas Socialism works within the present order of society with the view of gradually changing it. The Syndicalist knows of no compromise; class warfare, relentless and continual, is his supreme means. Sorel firmly believed that revolutionary energy is created by a conception of the supreme conflict. Thus, Syndicalism is the very antithesis of Socialism.

**Criticism of Syndicalism.** The idea of the Syndicalist Society has been left vague and hazy. There is a reason behind it. But no political movement can vigorously appeal unless its goal is definitely defined. Syndicalism aims at entrusting the industrial and political control to the workers as producers. Then, how to safeguard the interests of the consumers? There is no guarantee that the producers of value, once saddled with power and authority, may not abuse their authority in the same manner as the consumers have abused it.

Serious objection may also be taken of the methods of direct action advocated by the Syndicalists. Strike, sabotage and *ca'canny* methods disturb the orderly character of society and create a vicious social and moral effect. It has been rightly said that "a general strike is unnecessary, because a general election is never far off". Constitutional methods which bear the impress of public opinion are more enduring, with stabilising effects, than revolutionary methods intended to topsy-turvy the existing order of society, and with no certain result. Advocates of sabotage justify it as a part of class war against the capitalist, but in its more violent forms "it is cruel and probably inexpedient, while even in its milder form it must tend to encourage solvenly habits of work, which might easily persist under the new regime that the Syndicalists wish to introduce."<sup>9</sup> Habits seldom die with the people. Doubts are also entertained on the efficacy of strikes. Unsuccessful strikes demoralise the workers instead of intensifying class consciousness. Moreover, in the strike the working class, which has no surplus to rely upon during the period of the strike, are likely to starve before achieving their object. Many orthodox Marxians attack Syndicalism as being in essence anarchical. And so it is.

8. Quoted in *Socialism, Its Promise and Failure*, op. citd., p. 4.

9. Bertrand Russell, *Roads to Freedom*, p. 79.

The "New Syndicalism" in France. The World War I and post-war conditions produced a radical change in the character and policy of organised Syndicalism in France. Soon after the War began, a majority of the members in the General Confederation of Labour abandoned anti-militarism and anti-statism, joined the Socialists in entering into a truce with the government and co-operated actively in the various economic arrangements for furthering the successful conduct of the war. The post-war economic and social troubles in the country created further cleavages between the moderate nationalistic majority and the militant minority in the Confederation. The differences became so pronounced that the two groups finally separated in 1922, and the militant minority formed a new organisation: The "General Confederation of United Labour" (the C.G.T.U.—**Confederation Generale du Travail Unitaire**). This new organisation adopted the revolutionary doctrines of the Communist International, while the older organisation—C.G.T.—renounced all its revolutionary tactics.

The policies and methods of the new Syndicalism have been well elaborated in various articles and addresses by Jouhaux, Perrot and others. A comprehensive exposition of the philosophy of the new movement comes from Maxime Leroy. The workers are enjoined to abandon their narrow conception of class war and concentrate upon all those processes of inter-group collaboration that proved effective in war time. "Workers can now safely admit that production is not simply a matter of hand labour, that the whole process involves administration, invention, research, artistic craftsmanship, distribution, and even use and consumption. The production of any basic commodity or service demands a co-ordination among manual labourers, technicians, managers, artists, scientists, carriers, purveyors, users—all vitally concerned in the equality, quantity and price of that utility." The new Syndicalism is, accordingly, a philosophy of co-ordination and co-operation of all interests concerned directly and indirectly in the act of production and the consumers within the framework of the State. In fact, the presence of the State will be necessary for supervision and co-operation of the activities of the different unions. The State will, according to Leroy, become "through all its laws and in all its services and impulse to initiative, invention and economic heresy, with the same zeal with which the traditional State restrains spontaneity and innovation. It will endeavour to guide rather than restrain; its legislation will become more and more a means of enlightenment rather than dictation".

The new Syndicalists will also need the State to maintain military defence and conduct foreign intercourse. The coercive power of the State will be, of course, reduced to the minimum with the modification in its functions. The new Syndicalists adhering to positive and comprehensive programme condemn violence of any kind. There is, they say, "nothing proletarian about violence; it has been the weapon of malcontents of all ages and was inherited by proletarians from the bourgeois insurrectionary parties of the eighteenth and nineteenth centuries". The new syndicalism is, thus, "in some respects a return to the ideas of Waldeck-Rousseau and his associates" some six decades ago.



## GUILD SOCIALISM

**Rise of Guild Socialism.** Guild Socialism, which had its birth in Britain, is described as "the intellectual child of English Fabianism and French Syndicalism".<sup>10</sup> Fabianism, which embodies the principles of Collectivism, failed to have appeal for many Englishmen. They maintained that Collectivism did not remove the evils of capitalism, but merely replaced the capitalist bureaucracy by the centralised bureaucracy of the State. Nor did it give the worker the power to determine his own conditions of work. Syndicalism, though a working-men movement, did not suit the British temperament. It was too revolutionary and anarchical. The idea of a catastrophic change and a stateless society were foreign to the mentality of the British citizens trained in the machinery of democratic politics. The British Socialists, who did not believe with the Fabians, therefore adopted a *via media* between traditional Collectivism and traditional Syndicalism. Something was taken from the Collectivists and with the fundamentals of Syndicalism a new doctrine was evolved known as Guild Socialism. To the Guild Socialists the trade unions represented the germs of the future organisation of industry. The trade union, they argued, should do for modern industry what the Guild did for the medieval arts and crafts. Guild Socialism, accordingly, aims at placing authority in the hands of democracies of producers and democracies of consumers within the framework of the State.<sup>11</sup>

In its original form the doctrine of Guild Socialism was first expounded by British intellectuals in the first and second decades of the present century. Its basic ideas appeared in a book entitled **The Restoration of the Guild System** by A.J. Penty; published in 1906. In this book Penty advocated a return to the medieval principle of self-government in industry, whereby craftsman who was a member of an autonomous Guild owned the instruments with which he worked, and determined the nature and extent of his production. Penty's arguments were based partly on sentimental, partly on aesthetic grounds and throughout it was actuated by hostility against the modern methods of large-scale production. His proposals of organising industry on the basis of the independent craftsman, however, did not seem practical and were characterised as "The Utopian phase of Guild Socialist propaganda."<sup>12</sup>

The movement soon became popular and its adherents swelled. Guild Socialism assumed a more practical form at the hands of S. G. Hobson and A. R. Orange. They, too, advocated the revival of the medieval Guild system, but, at the same time, they realised that modern conditions required some fundamental modifications in order to fit the doctrine with the system of large-scale production. They asserted that the Guild idea should be adapted to modern conditions on the basis of the existing Trade Union organization. Their plea was for self-government in industry by the workers concerned in the industry, grouped together in a system of industrial Guilds, of which the existing Trade Unions

10. Rockow, *Contemporary Political Thought in England*, p. 150.

11. Joad, C.E.M., *Introduction to Modern Political Theory*, p. 74.

12. *Ibid*, p. 75.

would form the germ.<sup>13</sup> G.D.H. Cole was the chief active philosophic apostle of this new movement.

Cole was originally a Fabian and he was actively associated with the organisation of the Society's Research Department. All through his stay in the Society, Cole had been persuading his fellow members that they should abandon their affiliations with the political labourites and the liberals. But he failed. Then, the War came. The enormous increase in the powers of the State gave him a rude shock. He came to the conclusion that the omnipotence of the State could not be the road to the Millennium. By this time he had become a sympathetic student of the French Syndicalism. It had a considerable appeal for him and accepting William Morris as his patron saint he began to advocate the restoration of the medieval society of societies. He claimed a federal structure for the State and emphasized that the State does not embody within it the whole society. In a more than dozen books and pamphlets, Cole amplified the critical and constructive ideas of Guild Socialism and, thus, became "the best known and most influential figure in the movement".

**Guild Socialism Analysed.** Guild Socialists opposed, as had Marx, the dehumanizing work involved in large-scale production with its division of labour. They accepted the labour theory of value and the theory of surplus value, although in modified form, and they maintained that property is justified only when it rendered a service to society. They did not object to political democracy, but they argued that a government by representatives elected on a territorial basis was incapable of understanding and solving the complex problems of an industrial society. The Guild Socialists maintained that a system of functional representation based upon industrial unions would be best suited to a modern community. They advocated the retention of the State, but thought that its functions could be greatly restricted, when the unions, or guilds, assumed responsibility for government in matters primarily related to the economy. The Guild Socialists were as opposed to revolution as were the Fabians.

According to the Fabians capitalism entails the **poverty** of the masses whereas according to the Guild Socialists capitalism entails the **slavery** of the masses and this they attributed to two causes: (i) the wage system, and (ii) the method of representation. The Guild Socialists aim to free the masses from the shackles of slavery by making work better paid and by making it in itself more interesting and more democratic in organisation.

The Guild Socialists condemn the wage system and urge emphatically for its abolition. Here they agree with Marxian theory of surplus value and advance the argument that surplus value is the legitimate share of the worker. But it is not only the surplus value accruing to the employer which the Guild Socialists condemn. In the capitalist society, the workers in return for wages are expected and asked to surrender all control over production to their employers. They are regarded as mere "hands" in the act of production. These characteristics of the wage sys-

13. Cole, G.D.H., *Self-Government in Industry*, p. 5.

tem are marks of labour's degraded status and the Guild Socialists are out to reverse this order. They aim at restoring to labour the positive control of industry so that the worker may become "a man among men, with rights and responsibilities with a human soul and a desire for self-expression, self-government and personal freedom". If democracy, they assert, can really be a success, the principles of democracy should be applied to industry as well as to politics.<sup>14</sup> The Guild Socialists, accordingly, propose to place the control of industry in the hands of guilds of producers who would, in their turn, co-operate with a democratised State representing the people as consumers. Each industry will be reconstituted as a public service under the control of those who actually work in it, whether with hand or brain. In order to avoid the dangers of bureaucracy and of inefficiency, the Guild Socialists propose to establish complete industrial government through an elaborate system of committees. It is claimed that the interests of consumers will be adequately safeguarded by vesting final rights of ownership of each industry in the State. For Guild Socialists the main economic problem is to find "a way of restoring the spirit of craft, to devise a system that develops in workers not merely skill but also pride in their work and an interest not primarily in the amount they earn but in the form and quality of what they make."

The Guild Socialists categorically condemn the existing political structure of society. They hold the prevailing system of representation as 'misrepresentative and undemocratic' for "we choose, for a large number of desperate purposes men who are qualified to represent us in reference to only a limited number of those purposes." A representative elected from a territorial constituency becomes the representative of all different interests residing in that area. But he can really represent his own interests which he has in common with others. A cobbler can only represent his fellow cobblers as they constitute a community of interests. Similarly, a worker belonging to a particular industry can be a true representative of his own industry and no one else. If a lawyer represents cobblers, workers, and host of other interests, it is a sheer abuse of the principle of representation. The real representation, the Guild Socialists urge, must proceed on a functional and not on a geographical basis. A complete democratic society demands that there should be "as many separately elected groups of representatives as there are distinct and essential groups of functions to be performed. . . . Man should have as many distinctly and separately exercised votes as he has distinct social purpose or interests."<sup>15</sup>

But the Guild Socialists do not intend to scrap altogether the system of territorial representation. There are various interests, apart from the vocational interests, which men, who are members of the same country, have common with others. Problems like internal peace and security, defence, education, currency and credit, etc., are national problems and are the same for all whatever the occupation of the people. Representation of national interests, it is proposed to be left to the existing system of territorial representation. A true representative character, according

14. Cole, G.D.H., *Self-Government in Industry* pp. 154-55.

15. *Ibid.*, pp. 33-34.



to the Guild Socialists, is the combination of the functional and geographical representation reflected in two legislative assemblies, a political parliament and a functional or economic parliament.

Local problems, like the provision of gas, water, electricity and other public utility services, the Guild Socialist would entrust to a local Regional Guild. Finally, there will be Consumers' Councils. The functions of these Councils will be to determine, together with the workshop and factory committees of producers, the scale of production, costs and the prices of the articles produced.

Thus, the principle of functional democracy occupies an important place in the theory of Guild Socialism. It has been applied to the solution of questions both of industrial and political organisation. Joad has aptly remarked that the theory of functional democracy "reaching vigorously from the idea of a centralised and all-embracing State, advocates devolution of powers and functions to a number of different bodies which will, it is hoped, adequately express all the varied interests of man in the complex of modern society."<sup>16</sup>

The authors of Guild Socialism, therefore, find room for the State as well as the Guild; and this they do by a "separation of powers". To the State they will assign all matters that concern the national life, "for the guild they would vindicate all matters that concern the national income". In this way, two democracies—the economic and the political—will be realised in the State. For, unless there be economic democracy—the control by the workers themselves of their work—political democracy is all in vain. The factory, the Guild Socialists further urge, forms the necessary training school for active self-government, and unless democracy can be successfully established in the industrial sphere, it will never work out as a real democracy in politics, however widely the franchise may be extended "for the conditions under which men work, exert powerful influence upon their minds and attitudes; and they cannot easily learn to control the wider issues that arise in politics unless they are given the opportunity of controlling the more immediate concerns which affect them in their daily lives. Of course, this doctrine involves not only self-government in industry, but also a widespread system of functional democracy extending over every field of collective activity."<sup>17</sup> The goal of Guild Socialism is the attainment of democracy in economic life as well as in political life.

The Guild Socialists do retain the State but with far less confidence in it than the Collectivists. They insist on the need of plurality of organizations to express the plurality of interests of the individuals and society is a honeycomb of such associations, the State being one of them. The State, or the Commune, as the Guild Socialists describe it, has just the care of residual interests left over after the guilds have effectively organized the primary interests of the workers. As a worker, one is a member of the guild, but as a neighbour he is a member of the State or Commune. The Guild Socialists not only recognise and safeguard the interest of

16. Joad, C.E.M., *Introduction to Modern Political Theory*, p. 78.

17. Cole, G.D.H., *A Guide to Modern Politics*, pp. 406-07.

workers but of the consumers too by means of the consumers' co-operatives. It is, therefore, the people's movement.

**Methods of Guild Socialism.** The Trade Unions are the key to the methods of Guild Socialism. There is no satisfaction for Guild Socialists in the constitutional methods to gain their ends. The State, in its organisation and technique, is not a fit instrument, argue the Guild Socialists, for making the changes they desire. Fundamental economic transformation can be secured only through economic means. This can best be achieved by enlarging and developing the existing trade union movement and, then, the workers should pursue a policy of "encroaching control". By encroaching control is meant "wrestling bit by bit from the hand of the possessing classes the economic power which they now exercise by a steady transference of functions and rights from their nominees to representatives of working class". The Guild Socialists, thus, intend to achieve their goal through evolution "a natural and gradual, though consciously guided and expedited development of the existing industrial situation". Here they basically differ from the Syndicalists who believe and advocate revolutionary methods.

**Criticism.** Guild Socialism has, apparently a great appeal both for the worker and the consumer. The Guild Socialist State is intended to be a decentralised State with separate autonomous units. Opinions, however, differ on the status of the State. Hobson, for example, says that the State will be supreme over all Guilds, local and national, and other associations as it shall be the deciding authority on all disputes arising between diverse economic and political units. Cole, on the other hand, regards the State as an association like various other associations and not a dominating association over others as Hobson has suggested.

But Guild Socialism is now dead as a separate doctrine. Even Cole himself admitted that Guild Socialism "has since declined and virtually disappeared as a separate movement largely on account of the weakening of Trade Unions through industrial depression, but also because the changes in the political situation have forced to the front the issue of seizing political power, and have, therefore, pushed into background the question of the forms of organisation to be adopted for the exercise of power when it has been won."<sup>18</sup> The Guild Socialists demand too much of human nature. If the selfish instinct in man cannot be taken out, then, Guild Socialism fails in its goal. Similarly, the scheme of functional democracy does not seem to be a workable plan. If functional representation destroys social unity, functional democracy in industry presents its own insoluble problems. From where shall capital come and who bears the risk, are two pertinent questions which need proper answers.

### SUGGESTED READINGS

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|--------------|--|
| Beer, M.     | : <i>A History of British Socialism.</i>           |
| Bober, M.M.  | : <i>Karl Marx's Interpretation of History.</i>    |
| Chang, H.M.  | : <i>The Marxian Theory of the State.</i>          |
| Coker, F.W.  | : <i>Recent Political Thought</i> , Chaps. II, IV. |
| Cole, G.D.H. | : <i>Fabian Socialism.</i>                         |

18. Cole, G.D.H., *A Guide to Modern Politics*, pp. 404-405.

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|---|---|
| Cole, G.D.H.                              | : <i>Guild Socialism Restated.</i>  |
| Cole, G.D.H.                              | : <i>Social Theory.</i>   |
| Dewey, John                               | : <i>Individualism, New and Old.</i>  |
| Durbin, F.F.M.                            | : <i>The Politics of Democratic Socialism.</i>  |
| Ebenstein, W.                             | : <i>Today's Isms.</i>  |
| Hayek, F.                                 | : <i>J. S. Mill and Harriet Taylor.</i>   |
| Hilton, J.                                | : <i>Rich Man, Poor Man.</i>  |
| Joad, C.E.M.                              | : <i>Introduction to Modern Political Theory,</i><br>Chaps. III, IV.                                |
| Keynes, J.N.                              | : <i>The End of Laissez Faire.</i>  |
| Kirkup, T.                                | : <i>A History of Socialism.</i>  |
| MacDonald, J.R.                           | : <i>Socialism, Critical and Constructive, Capital,</i><br>Abridged popular edition by S. L. Trask. |
| Merriam, C.E., Barnes,<br>H.E. and Others | : <i>Political Theories; Recent Times.</i>  |
| Rockow, L.                                | : <i>Contemporary Political Thought in England,</i><br>Chaps. V, VII.                               |
| Roll, E.                                  | : <i>A History of Economic Thought.</i>   |
| Russell, B.                               | : <i>Roads to Freedom, Chaps. I-III.</i>  |
| Sabine, G.H.                              | : <i>A History of Political Theory, Chap. 32.</i>   |
| Tawney, R.H.                              | : <i>The Acquisitive Society.</i>   |
| Wayper, C.L.                              | : <i>Political Thought, Chap. IV.</i>   |



## Theories of the Sphere of State Activity—

(Contd.)

### COMMUNISM

**Meaning of Communism.** Communism is used to denote many different meanings. Sometimes it is used for a theory of society such as that of the early Christians, where nothing belonged to you and me but all property was held in common. Some people use it synonymously with Socialism which in reality it is not. For, while all Communists are Socialists, all Socialists are not Communists. A man in the street is very often given to understand that Communism refers to that system of society under which food, clothing, shelter, education, medical aid, and other necessities of life are freely administered according to want. But the fact of the matter is that Communism has none of these meanings. It is the philosophy of society as constructed by Karl Marx and the Communists are those who claim to be the inheritors of the true teachings of Karl Marx. The true Marxist use of the word Communism may be seen in the following quotation from Lenin where he speaks of the transition from Capitalism to Communism: "What is generally called socialism was termed by Marx the 'first' or lower phase of Communist society." In so far as the means of production become **common** property, the word 'communism' is also applicable here, provided we do not forget that it is not complete communism". Communism is, thus, a theory of method which seeks to lay down the principles upon which the transition from capitalism to socialism is to be accomplished, and its two essential doctrines are the class war and the revolution, that is, the forcible transference of power to the proletariat.

When Karl Marx and Engels promulgated the **Communist Manifesto** in 1848, they advocated the doctrine of 'Scientific Socialism', but in order to distinguish themselves from the petty bourgeois, reformers and utopian socialists, they took the name of 'Communist'. With the lapse of time, however, the name "Socialist" gradually came back and the followers of Marx were identified with it. At the close of First World War Lenin went back to the original name of 'Communist' in order to make the position of the Russian Bolsheviks stand out in distinction to the German and French "perverters" of Marx.

**Marxian Communism.** To Marx we must return, then, if we are to grasp the meaning and the foundation of communism. The leading fea-

tures of Marx's thesis have already been briefly discussed.' It is, however, necessary to recapitulate and expand what has been said in order to formulate the principle upon which Communism is based. (Marx saw all historical movements, whether religious or cultural or political, in terms of material conditions of life. "It is not the consciousness of man," he said, "that determines his existence, but quite the reverse, it is his social existence that determines his consciousness." Since the emergence of private property society has been divided into two hostile classes. "Just as in the ancient world the interest of slave owners was opposed to that of the slaves, and in the medieval Europe the interest of the Feudal Lords was opposed to that of the serfs, so in our times the interest of the capital class, which derives its income from the ownership of property, is antagonistic to the interest of the proletariat class, which depends for its livelihood chiefly upon the sale of its labour power." The capitalist class appropriates the entire surplus value produced by the proletariat class which, according to Marx, is the latter's legitimate due. With the growing complexity of industrial technique the control of industry becomes monopolised and concentrated in the hands of fewer capitalists, while the conditions of the workers grow more precarious.

It is at this stage that capitalism generates seeds of its own destruction. The instruments which capitalists use "to enlarge their profits and rents are the instruments which, when perfected, fall inevitably into the hands of the workers to be used by them to demolish the whole capitalist system.") Marx develops this prognosis in concrete detail. In the first place, the tendency under capitalist production is towards large-scale production, increasing specialisation of functions, standardisation of goods and then monopolisation. As a result of this tendency large-scale producers succeed in throwing out of market small-scale producers. The small-scale producers, thus, become, exploited and they join the ranks of the exploited proletariat class, swelling their number and strength. When ranks of the proletariat swell those of the capitalists dwindle. Secondly, the tendency is towards localisation and integration of industries. The former means the birth and growth of industries in such areas as offer the greatest relative advantages. The tendency to integration means the co-operation and co-ordination under one management of all the processes involved in the production of an article, from the raw material to the final stage. All this brings about the concentration of thousands of workers together. These constant mutual contacts make workers conscious of their disabilities and hardships and cement their group consciousness. Thirdly, large-scale production means two things. In the home market it results in unemployment, because of the extended use of machinery and other labour saving devices in order to reduce costs of production. Unemployment means loss in the purchasing power and, consequently, the demand in the home market is contracted. The producers hunt for new markets in foreign countries. Large-scale production also means extensive markets. Extensive markets can be possible only under conditions of highly developed means of communications and transport. This breaks barriers of distance between different countries facilitating in-

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1. See *ante*, Chap. XXVI.

ter-communications among workers spread throughout the industrial world, thus, strengthening the common cause of the workers and bringing in them the consciousness of their universal disabilities.

Fourthly, a common feature of the capitalist production is the occurrence of periodic economic crisis. Crisis may be due either to over-capitalisation or competition. The workers receive too small a proportion of the product of industry. Consequently, in prosperous periods much of the surplus value created by producers passes into the form of fixed capital held by the capitalists. The purchasing power of the workers having diminished they consume less goods. Markets are glutted with the surplus of goods produced and a period of failure and stagnation ensues. Finally, the constant endeavours of the capitalists to reduce costs of production result in the creation of a vicious circle. Unemployment in one industry means unemployment in other industries. This swells the number of workless workers and of all 'malcontents' the workless is the most discontented and hostile. Coker gives a matter of fact summing of the whole process: "Thus the capitalist system enlarges the number of workers, brings them together into compact groups, makes them class conscious, supplies them with means of inter-communication and co-operation on a world scale, reduces their purchasing power, and by increasingly exploiting them arouses them to organised resistance. Capitalists, acting persistently in pursuit of their own natural needs and in vindication of a system dependent upon the maintenance of profits, are all the time creating conditions which stimulate and strengthen the natural efforts of workers in preparing for a system that will fit the needs of a working man's society."<sup>2</sup>

Marx and Lenin, in contrast to Hegel, who contended that the State alone provides a just balance between the contending interests in society, maintained that the State is primarily an organ of class domination. The chief function of the State is the creation of an "order" which legalizes and perpetuates the oppression of one or more classes by another. The coercive dominance of the ruling class is achieved not only within the domestic, but also within colonial territories. "Imperialism," Marx declared, "is the most prostitute and ultimate form of State power" under capitalism. This phase of Marxian theory was worked out more fully by Lenin. He believed that capitalism has entered its final "Imperialistic stage", in which its contradictions have become fully manifest. In his famous book, **Imperialism: The Highest Stage of Capitalism**, Lenin analyses the rise and development of capitalistic monopolies, and the correlative increase in the power and scope of "finance capital". He says, "Industrial and finance capital are being united under a single directorate, and are working in a close co-operation with the State. These changes usher in an era of tariffs, bounties and quotas, and restrictive trade agreements, in consequence of which the expanding productive forces come into ever intenser conflict with the forms of capitalistic concentration." In an attempt to find a way out of this impasse, the monopolists make frantic efforts to find out and employ cheap labour and tap new markets to get cheap raw materials and to sell their commodities. It means a fierce

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2. Coker, F.W., *Recent Political Thought*, p. 52.



imperialistic struggle between the States controlled by capitalistic interests for a division and re-division of areas to exploit. The conflict inevitably culminates in World War, which deepens the crisis and prepares the way for open revolution.

The eventual result is open revolution overthrowing the capitalist society when the proletariat expropriates the private capitalist and appropriates the means of production. The capitalist methods of production are the cause of their own decay. Marx said, "Along with the constantly diminishing number of the magnates of capital grows the mass of misery, oppression, slavery, degradation, exploitation; but with this too grows the revolt of the working class, a class always increasing in numbers and disciplined, united, organized by the very mechanism of the process of capitalist production itself. Centralization of the means of production and socialization of labour at last reach a point where they become incompatible with their capitalist integument. This integument is burst asunder. The knell of capitalist private property sounds. The expropriators are expropriated." Marx maintained that the victory of working class carries with it the emancipation of humanity. "Though the revolution itself is carried out on a class basis, the state of society which follows the revolution will be based on the abolition of classes." The Communists claim that their battle against capitalism, though outwardly waged on behalf of a dispossessed class, is really the battle of the whole mankind; and "it is this conviction, embraced with the intensity born of a disinterested idea which generates the power of self-sacrifice and self-devotion underlying a superficially somewhat arid and doctrinaire programme."<sup>3</sup>

(Though the ultimate goal of the Communists is the emancipation of humanity by creating a classless and stateless society, yet its realization will take some time. The revolution of the proletariat paves the way, but it does not miraculously bring it into being. The revolutionary progress has been divided into two distinct stages: (1) a transitional revolutionary stage when the State dominated by the proletariat will continue functioning; and (2) a Communistic classless stage in which the State as a repository of authority will disappear/

**The Revolutionary Stage.** Although Capitalism proceeds naturally to its own destruction, yet it does not create Communism. Deliberate, intelligent, and informed action, according to Karl Marx, is needed for its achievement.) A transition period must, therefore, occur during which preparations are made for the perfect Communist community to come into being. A few remaining elements of capitalism must be swept away. The minds of men must be purged of the remnants of capitalist mentality with which they are infected. All these preparations require force, which means that the State and governmental machinery must be employed. The government will be a "dictatorship of the proletariat". The Communists have no faith in the ordinary constitutional methods of working a political democracy. ("In order to break down the resistance of the bourgeoisie," says Marx, "the workers invest the State with a revolutionary spirit." It follows that the State during the transitional stage will be

invested with oppressive and autocratic powers.) "Since the State," says Engels, "is only a temporary institution which is to be made use of in the revolution in order to forcibly suppress the opponents, it is perfectly absurd to talk about a free popular State; so long as the proletariat needs the State, it needs it not in the interests of freedom, but in order to suppress its opponents; and when it becomes possible to speak of freedom, the State as such ceases to exist." The Communists apprehend that the **bourgeoisie**, though dispossessed by a sudden revolutionary **coup**, would still make frantic efforts to regain their lost political and economic power. "In any and every serious revolution," says Lenin, "a long, obstinate, desperate resistance of the exploiters who for many years will yet enjoy great advantages over the exploited constitutes the rule."

The first stage, therefore, in the realisation of Communism will be what Lenin calls a "**quasi state**" of the workers or proletarian dictatorship. All governments, Marx contends, are dictatorial. The proletarian dictatorship differs from the previous dictatorships in that it provides, for the first time in history, majority control. It is, Marx says, far more democratic than other governments have been, including the bourgeois democracy of capitalism. And while the proletariat operates for a time as an exploiting class, its purpose is not to perpetuate its own power but to eliminate oppression for ever. [The proletarian dictatorship will take to the work of both construction and destruction] construction of Socialism and destruction of capitalism. [As destruction of capitalism cannot be accomplished in one comprehensive stroke, the transfer from Capitalism to Socialism is to be made by degrees,] "...that the first step in the revolution by the working class, is to raise the proletariat to the position of ruling class, to win the battle of democracy. The proletariat will use its political supremacy to wrest, by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the State, i.e., of the proletariat organised as the ruling class; and to increase the total of productive forces as rapidly as possible." The immediate measures to be adopted, according to the **Communist Manifesto**, are: abolition of private ownership of land, nationalisation of the means of communication and transport, taking over by the State of credit and banking, regulation of commerce, abrogation of the rights of inheritance, imposition of heavily progressive taxation, prohibition of child labour in factories, and an enforcement of equal liability of all to work, thus, breaking all privileges. These measures are to be followed by a gradual extension of public ownership in other fields of production. [The destruction of Capitalism is the construction of Socialism and ultimately advent of the communistic society.]

**The Post-Revolutionary Stage.** [Once the bourgeoisie has been suppressed and all the defects and remnants of the capitalist system have been removed, the necessity of the State ceases to exist.] It becomes superfluous and must "wither away". [When the whole society comes down to one level every one will be able to contribute his best to the social whole, and freely satisfy his needs. The State will give place to a free society of voluntary associations formed for the transaction of public business. It is this society whose advent bears witness to the fact that the revolutionary era has terminated.] This "brave new world", as

Marx names it, will be <sup>which</sup> in effect the state of complete freedom; a society without antagonism, without exploitation, in which, as Lenin says, "people will become gradually accustomed to the observance of the elementary rules of social life.... without compulsion, without subordination, without the special apparatus for compulsion which is called the State".

This is the climax of Marx's Socialism. When Socialism is achieved mankind will make the ascent, according to Engels, "from the kingdom of necessity to the kingdom of freedom". Marx's ultimate interest was in the liberated and cultivated individuals with time and opportunity for free development, intellectual and social. Marx's Socialism, therefore, like the goal of most other political creeds, radical or conservative, aims to bring about a social structure "in which the free and full development of every individual forms the ruling principle."

**Critics of Marxian Theory.** Marxist theory has been severely criticised for its sweeping generalisations, inconsistencies, and contradictions. Werner Sombart has denied the entire historical-economic thesis of Marxism. He maintains that non-economic interests, such as religious and political, have on the whole held the primacy in history. Max Weber and Ernest Troeltsch also assert that the influence of religion had been original and profound. Georges Sorel insisted that myths, ideals and heroic attitudes often play a more important role than economic processes. Max Lerner believes that "Marxists have not been sufficiently aware of the irrational elements in human motivation: folk traditions, nationalistic sentiments, racial prejudices, group neuroses, subconscious or semi-conscious impulses".

Communists' methods of overthrowing Capitalism and constructing Socialism through the revolutionary dictatorship of the proletariat require deep consideration. Wholesale violence and repressive methods are not the desirable means to gain the end, howsoever noble the end may be. Moral means must be adopted to achieve good results. It is difficult to believe that end justifies the means. Means and ends are convertible terms. To put it in the words of Gandhi, means may be likened "to a seed, the end to a tree; and there is just the same inviolable connection between the means and the end as there is between the seed and the tree". The dictatorship of the proletariat is invested with revolutionary spirit which sternly exercises repression to destroy all traces of Capitalism. Devotion to the party line or to face a purge is the simple truth of the dictates of Communism, and it is the rule of common behaviour as practised in the U.S.S.R. and other countries which have gone red. Beatrice and Sidney Webb deplore this "disease of orthodoxy" of Marxism. The violence of the dictatorship of the proletariat perverts and infects the goal of a peaceful co-operative Commonwealth, which Communism aims to establish. Violence and repressive policy stifles the democratic aspirations and creative spontaneity of the people who are told to march ahead for a classless and stateless society, which is to be without compulsion and without subordination.

Moreover, the course of capitalist development has been quite unlike that foreseen by Marx, who assumed that capitalism was in his time al-

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ready on the verge of collapse. It is, no doubt, true that capitalism that has persisted has been considerably different from the system with which Marx was familiar, "but the transition from the exploitative capitalism of the early and middle nineteenth century to the moderate capitalism of the mid-twentieth century occurred as a result of actions which Marx had deemed impossible." The Fabians correctly regarded the transition to Socialism as the peaceful culmination of democratic and evolutionary processes. The regulation of hours of work, wages and working conditions, the prohibition of child labour, the establishment of unemployment insurance and workmen's compensation, and many more developments have resulted from legislative enactments and have created an entirely different situation for working people. Likewise, many Social Democrats have rejected the Marxian concept of class struggle and favour collaboration with all progressive forces. Even Stalin favoured such broad co-operation in achieving victory over the Axis Powers in the Second World War and in organising the peace. The Twentieth Congress of the Communist Party owned and emphasised such a collaboration with the progressive forces and it constitutes the new Party thesis. Parliamentary collaboration with Social Democrats and other progressive forces is now permissible to defeat the reactionary forces opposed to the popular interest. The long resolution adopted at the Twentieth Congress admits that Socialism will not come to all the States in the same way and that "each State will make its own particular contribution to the one or the other form of democracy, to the one or the other type of dictatorship of the proletariat, to this or that tempo of socialist transformation in various aspects of the life of the society". The Congress expressed the view that "the establishment of the new socialist system in this or that country is an internal affair of the people in each country". Moreover, the rise of organised labour to a position of political power has also been contrary to Marx's theory. Marx had contended that the owners of the instruments of production always monopolise government and the legislative process in order to hold the labour class in subjection. But the Labour Party in Britain had been alternating with the Conservative Party in forming the Government since 1924. Even today the Labour Party is in power. Similarly, the great influence on government of organised labour in the United States from 1932 to 1952 could hardly give credence to this fundamental aspect of the Marxian theory.

Marx believed that no society could supplant another until that other had developed fully all the potential that was in it. When feudalism had fully run its course it was replaced by capitalism and capitalism in its turn is, Marx thought, subject to the same course of evolution. "No social order ever disappears," he maintained, "before all productive forces for which there is room in it have been developed." But this has not happened in Russia, China and other countries which have gone red. Taking the example of Russia and China, neither of the two had anything like a complete industrial development. Both of them were primarily agrarian and nearly feudalistic societies prior to their leap into Socialism.

Whatever may be your and mine reaction on Marx's thesis, it cannot be denied that his influence on human thought and action had been profound. No social philosopher, ancient and modern, has exercised a vaster

influence than Marx and Marxism is today the official ideology of millions. "True, it has been imposed by force upon most of them, but many have embraced it without compulsion because they have been convinced of its essential rightness." Convinced Marxists extol the truth of their doctrine with a zeal akin to that found in dedicated promulgators of a faith. And Marxism has an appeal to democrats because a Communist society only promises liberty as liberty is not worth having without equality. Equality can really exist in a classless society and Marx aimed to create such a society. In a society where equality can be secured there prevails fraternity. A Communist society, therefore, makes possible the realization of the true democratic ideals of liberty, equality and fraternity. Even the staunch advocates of capitalism today believe that political democracy is of little value unless supplemented by an economic system which provides a sufficient measure of security to all men.

Finally, there is, also, a psychological appeal in Marxist thought. "It offers an answer to men's problems. It tells the depressed that they are not themselves to blame for their inferior status; they are victims of a system and need only to change the system to be able to live on a plane of equality with all men." Marx's Socialism was scientific. His conclusions are fortified with historical facts and statistics. "To those who lack knowledge of the fields Marx deals with such a display can be convincing. Those who are attracted to the goals of Marxism take satisfaction in knowing that their cause is scientifically 'proved'".<sup>4</sup>

### BOLSHEVISM

**Lenin's doctrine—"Leninism".** Vladimir Lenin was the most ardent follower of Karl Marx and the most famous of the revolutionaries who carried the banner of Marxian Socialism to its successful achievement in Russia and strived for the proletarian revolution. Lenin was not himself a workman, but a member of the middle-class intelligentsia who had become interested in the revolutionary movement and Marxism when still very young. The execution of his elder brother for his part in the attempt to assassinate Alexander III in 1887, influenced Lenin deeply. The ostracism of his family after the execution accentuated his hatred of the society that supported privileges and submitted to activities of the few privileged people. He found solace in the writings of Marx and Engels and soon after organised a Marxist group that called for revolution.

The Tsarist Government realised the danger ahead in the activities of Lenin, arrested him in 1895, and exiled him in Siberia in 1897. While Lenin was in exile his colleagues formed organisations, called the Leagues of a Struggle for the emancipation of the working class, in all the key cities with a principal organisation at St. Petersburg. A meeting of the representatives of the various Leagues of Struggle was convened in the city of Minsk in 1898. The meeting proclaimed the organisation of the Russian Social Democratic Labour Party and issued a manifesto urging a fight against capitalism until the victory of Socialism. Before the Party could come into being all the members of the Minsk meeting were arrest-

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4. Harmon, Judd M., *Political Thought from Plato to the Present*, p. 406.

ed. But it proved to be a spark and the organisation that had been announced came into existence in 1903.

Lenin had returned in 1900, and he plunged himself immediately with organisation of the proposed Russian Social Democratic Party. But he soon found that there existed considerable differences of opinion even amongst his enthusiastic supporters. The liberal members of the intelligentsia were drifting towards the Socialist Revolutionary Party, formed from the remains of the Narodnik groups, and which had concentrated its work on the peasants. Plekhanov and Lenin's many other friends were of the opinion that the liberals could be helpful in furthering the cause of revolution and they should be encouraged to join the proposed Social Democratic Party. Lenin, taking a position to which he adhered up to his death, answered that "liberals were generally half-hearted, cowardly, and ready to compromise with Tsarism". The group led by Plekhanov thought it unnecessary for the new party to become a single highly centralised organisation of trained revolutionaries. Another group, known as the "economists", preferred an organisation of mass character that would progress with the workmen as they developed a political and social consciousness. In 1902, Lenin wrote a pamphlet, *What is to be Done*, calling for a vigorous, closely knit party of professional revolutionaries to lead the proletariat as its vanguard.

In the midst of these differences on plans and programmes the "First Congress" of the Russian Social Democratic Labour Party was called at Brussels on July 30, 1903. The Congress shortly moved to London, because of the police surveillance and there established itself as the Second Congress of the Party. There was a good deal of opposition to Lenin's ideals about the revolution and the dictatorship of the proletariat. Leon Bronstein, known in the Party and later to the world as Leon Trotsky, argued that the dictatorship of the proletariat could be accomplished only when the working class had become the majority of the population and had joined the party almost in its entirety. Lenin's views ultimately prevailed. But he lost on the rules regarding membership of the party. Lenin held the firm conviction that the party should be "a militant, disciplined, centralised organisation", and it should be limited to "a disciplined small group of schooled revolutionaries". Sympathisers, he believed, should have no place in the party. Trotsky and many others, who won on the rules, secured the vote of the Congress that anyone who accepted the programme of the party and promised to render all possible aid in the realisation of that programme, could become a member. This created a definite cleavage between the two groups and some of the moderates, who had helped to carry the vote over Lenin's group on the issue of membership, walked out of the Congress. This left Lenin's group in majority and the two factions in the party earned the names the **Bolsheviks** and **Mensheviks**, the former meaning majority and the later minority.

The differences between the two factions became wide and the Mensheviks did not participate in the Third Congress of the Party. The Bolsheviks took this an opportunity and annulled the rules of membership adopted in 1903. The new rules permitted membership to a small group of revolutionaries only, dropping out the sympathisers. A plan was also adopted for armed uprising, and the political strikes in the country were



to be used as the springboard of the uprising. It was decided that the leadership of the planned uprising should be in the hands of a provisional revolutionary group. The Bolsheviks, thus, took an active and direct part in the barricade fighting later known as the Revolution of 1905. The Revolution did not succeed and from its failure Lenin drew the conclusion that "the offensive against the enemy must be most energetic; attack and not defence must be the slogan of the masses".

There was no guide book for the revolution; Marxism provided only an ideological guidance. Lenin attempted to provide one while awaiting his opportunity to lead it. But hardly had he finished the first part of the celebrated volume, *The State and the Revolution*, which did not even cover the analysis of the events of 1905, that he ran back to Russia from exile to lead the revolution. Lenin was determined to act quickly, no matter at what cost. He caused the Bolsheviks to break with the Mensheviks and to form a separate party. This enabled the Bolsheviks to gain control of the Petrograd Soviet and with the new slogan "All power to the Soviets", the rest followed in rapid succession and the first Socialist State came into being. Lenin, thus, adopted Marxism to Russia. The philosophy of Marx could not be applied to Russia, as he had anticipated that the proletarian revolution would take place in an advanced industrial country, like Germany or United Kingdom. Russia was an agriculturist country. But Lenin applied Marxian principles with an instinctive understanding of the Russian realities.

While Karl Marx put too much emphasis on the development of class-consciousness among the workers, Lenin's emphasis was on the party organisation. Without a strong and vigorous party organisation, he could not conceive of a revolution. "The Proletariat has no weapon," he said, "in the struggle for power except organisation. Constantly pushed out of depths of complete poverty, the Proletariat can and will inevitably become an unconquerable force only as a result of this: that its ideological union by means of the principles of Marxism is strengthened by the material union of an organisation holding together millions of toilers in the army of the working class." At the same time, Lenin did not permit to members of the party the right to criticise the party policy and its programme. Party, for him, was a single, unified and centralised structure and in it only one will, one direction must prevail. It demanded of its members unanimity of views, the strictest of discipline, and all its decisions must be carried out unconditionally, precisely and punctually. "We are marching," said Lenin, "in a compact group along a precipitous and difficult path, firmly holding each other by the hand, we are surrounded on all sides by enormous forces, and are under their almost constant fire. We have combined voluntarily, especially for the purpose of fighting the enemy and not to retreat into the adjacent march. And now several in our crowd begin to cry out—let us go into this March." At another place he said, "Opportunity for open fighting. Opinions expressed. Tendencies revealed. Groups defined. Hands raised. A decision taken. A stage passed through. Forward. That's what I like.' That is life.' It is something different from the endless, wearing intellectual discussions, which finish, not because people have solved the problem, but simply because they have got tired of talking."

Within the party itself Lenin attempted to combine a measure of democracy with one of discipline through the formulation of the principle of "democratic centralism." This principle requires that party members elect their own officials at all levels and they are accountable to those who elect them. It demands, however, strict party discipline and insists that once decisions have been taken these must be obeyed without demur. The decisions of the higher bodies are unconditionally binding on the lower ones. "Democratic centralism", accordingly, implies a combination between the principle of mass participation at the bottom and the concentration of leadership at the top.

The great achievement of Lenin, therefore, was the reconstruction of the Communist Party which became the vanguard of the Soviet people in their struggle to strengthen and develop the socialist system. In a formal sense, the Party and the State were separate institutions, but in actual reality both hardly distinguishable. "The workers themselves," maintained Lenin, "do not know as yet how to rule and would have first to go through years of schooling. Hence in order to rule, an army of revolutionary Communists hardened in battle is necessary. We have such, it is Party."

The Marxian assumption was that the growing class consciousness of the proletariat would weaken and break the nationalist sentiment that tied the workers to their country. Patriotism, he contended, was a fetish of the bourgeoisie to control the exploited and oppressed class. The proletariat would, Marx believed, eventually come to realize the strategy of the bourgeoisie and defeat this effort by giving their loyalty to their fellow workers irrespective of the national boundaries. Marxism was, thus, an international movement. But it was appalling to Lenin and his followers to see the patriotic fervour and deep sense of nationalism displayed by the members of the working class at the outbreak of World War I. The majority of the Socialists, too, though they paid respects to the views of Marx, supported their "bourgeois" government. Lenin was so deeply disgusted that he openly hoped for the defeat of Russia, because he believed that it would hasten the advent of revolution and wreck the Czarist regime.

Lenin, then, wrote a book, **Imperialism, the Highest stage of Capitalism**, wherein he attempted an explanation of the phenomenon described above, that is, that the proletarian appeared to be growing less, rather than more revolutionary. He attributed their apathy to certain operations of the Capitalist system which had extended its period of growth beyond that anticipated by Marx. Marx, Lenin said, had been unable to foresee the developmental potential of capitalism. He gave an account of the evolution of capitalism from the time of Marx's death to the beginning of World War I. He characterised this period by two important tendencies: (1) the export of finance capital and the control of the banks over industry, and (2) the growth of gigantic monopolies. The "inevitable" economic forces, Lenin maintained, would throw these monopolies in a savage struggle to find new markets culminating in war between the imperialist countries. Such a war, according to Lenin, is a war between trusts in which workers have no stake. Lenin admitted that certain parts of the proletariat, especially the skilled workers, profit from this imperialistic

development. Lenin believed that World War I was the beginning of the end for capitalism. It will be followed, he said, by other wars, all of which will be fought for the same purpose. These wars will make the proletariat increasingly revolutionary and will speed the historical process to the final stage of world revolution. He appealed to the workers to seize the opportunity by turning the imperialist wars into civil wars. Class loyalty, Lenin contended, must be above national loyalty. As for himself, "he would sacrifice Russia rather than the revolution if the alternative should ever arise."<sup>5</sup>

Lenin had the deepest contempt for utopias in general and for the utopian socialists in particular. He would seldom venture to forecast future developments except in broadest terms. But with regard to the process of the "withering away" of the State, he was unusually precise and concrete and it caused considerable embarrassment to his successors. He maintained that "the toilers need a State merely for the suppression of the resistance of the exploiters" and since the latter formed a small minority, the breaking down of their resistance appeared to him as a matter "relatively easy, simple and natural". The proletarian State once established would immediately, he believed, begin to "wither away" as in society free from class contradictions the State was both unnecessary and impossible. There will be two stages of the Communist society, Lenin says. The first is the phase of socialism. Here the means of production are publicly owned, classes still exist but are in the process of disappearing; so, too, is the State. A kind of equality exists in the sense that in this phase of development each contributes "according to his ability" and receives "according to his work," that is, according to his productive contribution. Since the State, too, in the first stage is in the process of 'withering away', Lenin outlined a number of steps which will accelerate this disappearing of the State. The first step was the abolition of the army and its replacement by the armed people, a popular militia. Then, he would abolish bureaucracy forthwith. Bureaucracy, Lenin regarded as a dangerous inheritance from the bourgeois regime and the victorious proletariat, he asserted, must not only be content to take over the machinery of government but it should be broken and destroyed altogether to get rid of all bureaucratic elements. Lenin, indeed, favoured the immediate introduction of a system under which "all should fulfil the functions of control and supervision, all should be 'bureaucrats' for a time and, therefore, none could be a bureaucrat." In the second stage, as envisaged by Lenin, classes and the State disappear. It becomes a classless and Stateless society. Production is vastly expanded, and human behaviour achieves a degree of sociability that enables men to live together without state-imposed authority. The final stage is that in which men can live according to the principle, "From each according to his ability, to each according to his needs."

Finally, Lenin would retain the elected representative institutions in the new set-up of the socialist government, but he would forthwith scrap "parliamentarianism" as a system. By "parliamentarianism", Lenin meant the doctrine of the separation of the legislative from the executive power.

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5. Bertrand Russel, *The Practice and Theory of Bolshevism*, p. 31



Referring to the doctrine of the separation of powers, Vyshinsky writes, "...From top to bottom the Soviet social order is penetrated by the single general spirit of the oneness of authority of the toilers." The proletarian representative assemblies, according to Lenin, must be places of work, not for idle talk. He characterised parliaments of bourgeois democracies as "talking shops" and advocated the abolishing of the immunities of the deputies. In fact, Lenin insisted that the Revolution necessarily demanded a complete shattering of the bourgeois State apparatus, and that a new Soviet State, based upon workers' councils ("soviets"), and directed by a single vanguard party of disciplined members, must take its place. And he was in a position to carry his ideals into execution.

What Bolshevism promised to the people of Russia under the inspiration of Lenin may best be described in the words of Bertrand Russell. It is a lengthy quotation, yet it is very instructive. He writes, "Bolshevism has supplied the new religion. It promises glorious things: an end of the injustice of rich and poor, an end of economic slavery, an end of war. It promises an end of the disunion of classes which poisons political life and threatens our industrial system with destruction. It promises an end to commercialism, that subtle falsehood that leads men to appraise everything by its money value, and to determine money value often merely by the caprices of idle plutocrats. It promises a world where all men and women shall be kept sane by work, and where all work shall be of value to the community, not only to a few wealthy vampires. It is to sweep away listlessness and pessimism and weariness and all the complicated miseries of those whose circumstances allow idleness and whose energies are not sufficient to force activity. In place of palaces and hovels, futile voice and misery, there is to be wholesome work, enough but not too much, all of it useful, performed by men and women who have no time for pessimism and no occasion for despair."<sup>6</sup> How far Bolshevism has succeeded in fulfilling its mission after the death of Lenin is revealed in the story of Stalin and his successors.

**Joseph Stalin—Stalinism.** Stalin was the successor to Lenin. But Lenin's death in January 1924, was followed by a bitter struggle within the Communist Party and it centred round the issue of world revolution. Trotsky, along with others who held similar views during the life-time of Lenin, considered the promotion of world revolution not only the chief but the sole object of the Soviet Union. He believed that the construction of Socialism and the consolidation of the Dictatorship of the Proletariat were impossible in Russia without the direct support of the proletariat of Europe. Stalin, who had held similar views as late as April 1924, suddenly reversed himself and championed the principle of "Socialism in a single country", provided the country concerned had a large territory, a large population and abundant natural resources. The Fourteenth Congress in December 1925, endorsed Stalin's doctrine and the decision that the country was able to build Socialism even though surrounded by capitalist countries became the official creed of the Communist Party. The ideal of world revolution was not given up, but it ceased to be an active factor in Soviet policies both national and international. In its international relations the USSR

6. Bertrand Russel, *The Practice and Theory of Bolshevism*, p. 19.

sought co-operation with the capitalist States, and at home it embarked on vast schemes of economic reconstruction embodied in the Five-Year Plans. Stalin attached so much importance to his doctrine that in his report to the Fifteenth Congress in 1926, as well as on different other occasions, he unequivocally declared that without full assurance that Socialism could be built within the Soviet Union the industrial programme would be futile. At the Seventeenth Congress in 1937, he hailed the effort to complete the construction of "Socialism in a single country" as successful. And those who opposed his concept met the fate of Trotsky.

The doctrine of "Socialism in a single country" was a distinct departure from the Marxian theory and consequently it entailed a revision in the theory of the State. According to the official view, the State, having its origin and justification in class struggle, can exist only so long as there are classes. With the elimination of private ownership of the means of production class distinctions disappear and simultaneously the State should begin to "wither away". But Stalin held that the withering of the State can be accomplished not through the weakening of the State power, but through the maximum increase of its strength. In his report to the Eighteenth Congress Stalin explained the reasons why Soviet Communism differs from the norm set by Marx and Lenin. He said that the contradiction between the Communist Commonwealth envisaged by Marx and Lenin and the Soviet Union as it existed was due to the capitalist environment and especially due to the activities of "foreign spies, assassins and wreckers" sent to Russia by foreign intelligence services. Stalin pointed out that Engels never discussed the position of a single Socialist State encircled by hostile capitalist nations. He was either concerned with the inner process of development of the future Socialist State, irrespective of the international situation, or proceeded on the assumption that Socialism would be victorious in all or in a majority of the countries. "But it follows from this," Stalin said, "that Engels' general formula about the destiny of the socialist state in general cannot be extended to the partial and specific case of the victory of socialism in one country alone. A country, which is surrounded by capitalist world is subject to the menace of the foreign military attack, cannot, therefore, abstract itself from the international situation, and must have at its disposal a well-trained army, well-organised punitive organs, and a strong intelligence service—consequently must have its own State strong enough to defend the conquests of Socialism from foreign attacks." It is important to repeat here the views of Lenin. Lenin had said, "In a society free from class contradictions the State is both unnecessary and impossible." Disappearance of the army and elimination of bureaucracy were the principle ramifications, according to Lenin, of the withering of the State.

Stalin divided the history of Soviet Russia into stages. The first stage lasted from the advent of the Bolsheviks to power to liquidating of the exploiting classes. During this period the State performed two principal functions: suppression of the exploiters at home, and defence of the Soviet Union from foreign aggression. The second stage is the period from the liquidation of the capitalist elements to the construction of Socialism and consequently the adoption of the prevailing Constitution in 1936, which registered and gave legislative embodiment to what had been actual-

ly achieved. The Socialist State, as Russia had in the second stage, Stalin maintained, was entirely novel and it differed considerably both in form and functions from the Socialist State of the first period. USSR was moving towards Communism. Stalin, then, posed a question, "Shall we maintain the State under Communism?" He replied. "Yes, it will be maintained unless the capitalist environment has been liquidated, unless the danger of military aggression from the outside is removed. It is evident that the forms of our State will be altered again according to the modification of the domestic and foreign policy." "No, it will not be maintained and will wither away, if the capitalist environment has been removed, if its place has been taken by a socialist environment."

In brief, the State, according to Stalin, will not "wither away" unless capitalist environment has been liquidated; and a pre-requisite of the withering of the State is the existence of socialist environment. So long as the Soviet State is encircled by capitalist countries, it should be strong enough to consolidate socialist economy and to combat international aggression. Here Stalin differed both from Marx and Lenin.

While Stalin's dictatorship of the proletariat was building socialism in a single country, his nationalism also found expression in the creation of a new type of multi-national State and the Constitution of 1936 is a perfect mirror of the same. According to his definition "a nation is an historically evolved, stable community of language, territory, economic life and psychological make-up manifested in a community of culture." Upon this definition he distinguished various national areas within the USSR and permitted wide autonomy to all these regions. In pursuance of this ideal, the Soviet Government has encouraged a remarkable diversity of language and culture. The changes introduced in the Constitution in 1944 granting to each constituent Republic the right to enter into direct relations with foreign States, to conclude agreements and exchange diplomatic and consular representatives with them, and to maintain troops, represent a further expression of the multi-national policy of the Soviet Union.

**The Stalin Cult.** Stalin not only controlled the government, but also the Party machine. If under Lenin the party became the "vanguard of the proletariat," under Stalin the dictator became the vanguard of the party. Power, thus, accumulated in the hands of one single person and Stalin destroyed those who challenged his supremacy. The obvious result was Stalin's worship. No other public figure had been driven, during his life-time, to such incredible lengths of adulation as Stalin was. He was described as "the greatest genius on earth"; "greatest architect of communism"; "wise teacher and leader"; "inspirer of our glorious victories"; "foremost authority on science, literature; linguistics, music, etc." And Stalin, as Khrushchev observed at the Twentieth Congress, "acted not through persuasion, explanation and patient co-operation with people, but by imposing his concepts and demanding absolute submission to his opinion. Whoever opposed his concept or tried to prove his viewpoint and the correctness of his position was doomed to removal from the leading collective and to subsequent moral and physical annihilation." Even



Lenin was cited by Khrushchev, in his speech at the Twentieth Congress, to have described Stalin as "excessively rude" who did not have a proper attitude towards his comrades, and that he was capricious and had abused his power. Khrushchev further observed, "We have to consider seriously and analyse correctly this matter in order that we may preclude any possibility of a repetition in any form whatever of what took place during the life of Stalin, who absolutely did not tolerate collegiality in leadership and in work, and who practised brutal violence towards everything which opposed him, but also towards that which seemed to him capricious and despotic character contrary to his concepts."

Stalin, in brief, was shown at the Twentieth Congress as a man of colossal conceit, unbounded ambition and ruthless nature who did not hesitate to send thousands of persons to gallows in order to maintain himself in power, and "the cult of the individual acquired", in Khrushchev's words, "such monstrous size chiefly because Stalin himself, using all conceivable methods, supported the glorification of his own person. This is supported by numerous facts. One of the most characteristic examples of Stalin's self-glorification and the lack of even elementary modesty is the edition of his **Short Biography** which was published in 1948." This book is the expression of most dissolute flattery, an example of making a man into a "godhead, of transforming into an infallible sage, the greatest leader", "sublime strategist of all time and nations".

Stalin's contributions to the theory of Socialism consist mainly in his interpretations of Lenin's writings and are found principally in two books, **Foundations of Leninism** and **Problems of Leninism**, both published in 1924, shortly after Lenin's death. In the **Foundations of Leninism**, Stalin reiterates and defends Lenin's theory of revolution and describes the technique to advance the cause of world revolution. The Soviet Union should become a base, Stalin says, from which the revolutionary cause may be advanced. Stalin also outlines the plan for the world revolution more clearly than Lenin had done. Here he combines Trotsky's theory of permanent revolution with Lenin's theory of imperialism and proposes that the attention of the revolutionaries be directed to the colonies rather than to the advanced capitalist countries. Stalin wrote, "The front of capital will not necessarily be pierced where industry is most developed, and so forth; it will be broken where the chain of imperialism is weakest, for the proletarian revolution is the result of the breaking of the chain of the imperialist world front at its weakest point. It is possible therefore that the country which begins the revolution, which makes a breach in the capitalist front may prove to be less developed from the capitalist point of view than others which are more developed but have remained, nevertheless, within the framework of capitalism."

In his **Problems of Leninism**, Stalin warns of the dangers of imperialist capitalism in support of his argument for Socialism in a single country. Communism and capitalism, he maintains, cannot long exist side by side and the country must be prepared for the conflict. In this way,

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8. Stalin, J., *Foundations of Leninism*, rev. trans., International Publishers Company, Inc., New York, 1932, pp. 33-34.

capitalist environments will disappear paving the way for international revolution and overthrowing of capitalism.

**New Thesis of the Communist Party.** The cult of personality was resolutely opposed at the Twentieth Congress as alien to the spirit of Marxism and Leninism. The cult of personality, the Congress further held, turns one or another leader into a miracle-performing hero and at the same time minimises the role of the Party and the popular masses. Khrushchev said in his speech, "After Stalin's death the central committee of the party began to implement a policy of explaining concisely and consistently that it is impermissible and foreign to the spirit of Marxism-Leninism to elevate one person, to transform him into a superman possessing supernatural characteristics akin to those of a god. Such a man supposedly knows everything, sees everything, thinks for everyone, can do anything, is infallible in his behaviour."

The long resolution adopted on domestic and foreign policies by the Twentieth Congress marks a spectacular development in the policy of the Communist Party and the methods it would advocate for the realization of a socialist society ultimately leading to a Communist Commonwealth. The old thesis about the contradictions of capitalism and inevitability of war has not been discarded, but it makes a number of significant admissions and consequently modifications thereto, particularly relating to the transitional stage from Capitalism to Socialism. While admitting the non-inevitability of war, the Congress asserted that the Communists do not necessarily stand for the violent overthrow of the capitalist order. Socialism, it was maintained, will not come to all States in the same way. And that "each State will make its own particular contribution to the one or the other form of democracy, to the one or the other type of dictatorship of the proletariat, to this or that tempo of socialist transformation in various aspects of the life of the society." The Congress expressed the view that "the establishment of the new socialist system in this or that country is an internal affair of the people in each country".

The modifications of doctrine presented at the Twentieth Congress are thus:

- (i) the non-inevitability of war;
- (ii) the sanctioning of different paths to Socialism;
- (iii) the acceptance of the possibility of Socialism coming to power by parliamentary means;
- (iv) the possibility of co-operation with the Social Democrats.

The Congress claimed that its resolution embodying the means of realising a Socialist society represented merely a return to Leninism. Whether it is a return to Leninism or it represents a new approach to the problem of Socialist transformation is debatable. But no one can deny that the resolution of the Twentieth Congress throws overboard the concepts of inevitability of war between Capitalist and Communist States, class conflict, and the identification of democratic Socialism with Capitalism. Khrushchev summed up the new directive for the Communist parties abroad in these words: "...The present situation offers the working class in a number of capitalist countries a real opportunity to

unite the overwhelming majority of the people under its leadership and secure the transfer of the basic means of production into the hands of the people....The working class, by rallying around itself the toiling peasantry, the intelligentsia, all patriotic forces...is in a position to defeat the reactionary forces opposed to the popular interest, to capture a stable majority in Parliament, and to transform the latter from an organ of bourgeois democracy into a genuine instrument of the peoples' will. ...." It means that parliaments, which, according to Lenin, were to be utilised for the express purpose of their eventual destruction, are now recognised as organs of genuine democracy for the working people and that parliamentary collaboration with Social Democrats and other progressive parties is permissible to defeat the reactionary forces opposed to the popular interest. The formation of the first Communist Ministry in the State of Kerala in India within the framework of the prevailing Constitution was the immediate implementation of the new directive of the Twentieth Congress for the Communist parties abroad. The Communist Party in the State of Kerala had also directed its best efforts to collaborate with the Praja-Socialist Party in order to capture a stable majority and form a coalition with them, although the P.S.P. did not accept the Communist invitation. But it is indicative of a genuine desire of the present Communist programme to seek the co-operation of the Social Democrats. Another aspect of the implementation of this programme is the series of visits by prominent socialists of all the countries of the world to Moscow on the invitation of the Soviet Government and the visits of top Soviet leaders, including Bulganin and Khrushchev, abroad.

**The New Programme for constructing a Communist Society.** The Twentieth Congress instructed the Central Committee to draft a new programme of the Communist Party. This programme, called the Third Programme aiming to build the Communist society in the Soviet Union within the next twenty years, was adopted by the Twenty-second Congress held in October 1961. Khrushchev explained the reasons for setting the time limit and said, "when the draft programme was being discussed, some comrades wondered whether the time allocated to the task was not too long. No, comrades. To prepare society for the principles of communism we have to develop the productive forces enormously and create an abundance of material and spiritual values. And that takes a certain amount of time. The bowl of Communism is a bowl of abundance that must always be full. Everyone must contribute his bit to it, and everyone must take from it." Khrushchev further said that it would be a fatal error to decree the introduction of Communism before all the necessary conditions of it have been fulfilled. In the economic sphere it means to create powerful productive forces in the country and the development of the Soviet Union into the world's leading industrial power in order to ensure the world's highest standard. In the sphere of social relations, the still existing distinctions between classes may be eliminated. This means, all classes hitherto existing in the Soviet Union and the distinctions prevailing between town and country and between physical and mental labour be eradicated and all such classes should fuse into a classless society of Communist working people. When this has been done there will be greater economic and ideological community "and the fea-



tures of the man of the Communist society will develop, harmoniously combining ideological integrity, broad education, moral purity and physical perfection". Finally, in the political sphere all citizens will participate in the administration of public affairs, and society will prepare itself for the full implementation of the principles of communal self-government through a most extensive development of social democracy.

**Shape of the Communist Society.** The draft programme defined Communism and this definition gives a picture of the Communist society to come after twenty years. "Communism is a classless social system with one single form of public ownership of the means of production and full social equality of all members of society; under it, the all-round development of people will be accompanied by the growth of the productive forces through continuous progress in science and technology; all sources of public wealth will gush forth abundantly, and the great principle 'From each according to his ability, to each according to his needs' will be implemented. Communism is a highly organised society of free, socially conscious people in which public self-government will be established, a society in which labour for the good of society will become the prime, vital requirement of everyone, a necessity recognised by one and all and the ability of each person will be employed to the greatest benefit of the people". Here are the salient features of Communism so defined and the stages through which it is to evolve:—

1. Communism is a classless social system. Overthrowing the rule of the exploiting classes, the landlords and the capitalists, and abolishing their private ownership of means of production was carried through as a result of October Revolution. In the second phase individual small-scale commodity production was converted into a large-scale, completing the construction of a single socialist economic system, and abolishing the last of the exploiting classes, the class of the **Kulaks**. The third phase covers the new programme and it aims to remove class distinctions between workers and peasants, the essential distinctions between town and country, and creating conditions for an organic fusion of physical and mental labour.

2. This task is to be accomplished through a high degree of Communist consciousness. Industry, discipline, and devotion to the public interest are qualities typifying the man of the Communist society and this is bound up, above all, with a rapid growth of the productive forces. It is precisely a high level of the productive forces and socialist relations of production that actuates the gradual process of the distinctions between the classes of the working people.

3. The elimination of distinction between classes makes for greater homogeneity of society. All people will have equal status in society, will stand in the same relation to the means of production, will enjoy equal conditions of work and distribution, and will actively participate in the management of public affairs. Harmonious relations will be established between the individual and society on the basis of the unity of public and personal interests. Classless Communist society will, thus, constitute the highest form of organization of the human community. For all their diversity, the requirements of people will express the sound reasonable requirements of the fully developed person.

4. The purpose of Communist production is to ensure uninterrupted progress of society and to provide all its members material and cultural benefits according to their growing needs, their individual requirements and tastes. People's requirements will be satisfied from public sources. Articles of personal use will be in the full ownership of each member of society and will be at his disposal.

5. Communist society, which is based on highly organised production and ideology, alters the character of work, but it does not release the members of society from work. It will by no means be a society of anarchy, idleness and inactivity. Every able-bodied person will participate in social labour and thereby ensure the steady growth of the material and spiritual wealth of society.

6. Communist production demands high standards of organisation, precision and discipline, which are ensured not by compulsion, but through an understanding of public duty. Communism represents the highest form of organisation of public life. All production units and self-governing associations will be harmoniously united in a common planned economy and a uniform rhythm of social labour.

7. The dictatorship of the proletariat has fulfilled its historic mission and has ceased to be indispensable in the USSR from the point of view of the tasks of internal development. The working class has transformed the state of proletarian dictatorship into a state of the whole people.

8. But it does not mean the disappearance of the State. The State will be retained. The process of its 'withering' away will be a very long one. "For some time, features of state administration and public self-government will intermingle. In this process the domestic functions of the state will develop and change, and gradually lose their political character. It is only after a developed Communist society has been built in the USSR and provided socialism wins and consolidates in the international arena, that there will no longer be any need for the State, and it will wither away."

9. The fact that the dictatorship of the proletariat is no longer necessary does not in any way imply any relaxation of public order and legality. The rights, freedom, honour and dignity of the citizens will be closely protected by society and by the State.

10. The principle of co-existence of States with different social systems remains the general principle of the foreign policy of the Soviet State. In terms of internal conditions, the Soviet Union needs no army. But since the danger of war coming from the imperialist camps persists, it is necessary to strengthen the armed forces and the defence potential of the Soviet Union. Defence of the country, and service in the Soviet Armed Forces, it is enjoined, is the lofty and honourable duty of Soviet citizens.

**Khrushchev's exit.** Khrushchev dominated the Soviet political scene for eleven years as the Party Secretary and since 1958 to mid-October 1964, he simultaneously held the two posts of the Secretary and the Prime Minister. His exit was sudden and unexpected, ostensibly for rea-

sons of health and age, but the Soviet people and the outside world are accustomed to such dramatic changes at the top. The strange aspect of Khrushchev's exit is that the Russians who wept for Stalin have shed no tears for the more generous and affable Khrushchev. One possible explanation is that the former died in office before his crimes were exposed while the latter only lost his job when his "indiscretions" had sufficiently exasperated his colleagues and disgruntled a small army of officials.

But if Khrushchev and his methods are gone, much of his policy remains. Kosygin, the present Premier, in his report to the Supreme Soviet indicates some changes in emphasis in Russian policy. But there are few indications of striking new lines of policy, national or international. Peaceful co-existence is to continue to ensure peaceful conditions for the building of Communism and similarly reduction in the military budget, continuation of talks with Western Powers with special reference to developing relations with the United States of America, and larger trade with the West. In Kosygin's report there is bare reference to the "serious mistakes" in agriculture, such as insufficient material incentives to collective farmers and the endless reorganizations. The new leadership hope to overcome the lag in agricultural production within the next few years. All this confirms the beliefs that the new leaders were opposed to Khrushchev's personal methods of conducting Soviet affairs, which resulted in his brinkmanship in Cuba, intense hostility to Peking and overtures to Bonn, for all of which the rest of the leadership was obviously unprepared. They accuse him now for ignoring the collective leadership, one of the familiar Khrushchev's charge against Stalin.

Khrushchev was one of the master-builders of the Soviet Union and his political eclipse in no way alters this fact. The eleven years of Khrushchev era were years of radical and hopeful changes. Stalin had transformed USSR economically and made her a military power second only to the United States. Khrushchev inherited a cruel legacy and it required, indeed, a courage on his part to demolish the Stalin cult and to present a new thesis for achieving Communism as endorsed by the Twentieth Congress. Khrushchev's commitment to co-existence was sincere and both in his efforts to achieve a detente with the West and in his unflinching appreciation of the role of the non-aligned Powers in strengthening the peace, he showed strong determination and supreme statesmanship, without a peer in the Soviet history. But his policy was not pure Marxism-Leninism. Khrushchev's policy was one of liberalisation on all fronts. In a memorandum prepared by Togliatti, General Secretary of the Italian Communist Party, just before his death in August 1964, it was pleaded that all possible efforts should be made to restore the unity of the "socialist forces". It is probable that Togliatti testament might have created a profound impression on the Soviet Communist Party and on its Central Committee. It is likely to have been thought that if Khrushchev remained any longer at the helm of Soviet affairs, it might result into a permanent split in the international Communist movement. There is authenticity in it and subsequent events proved so, although it did not essentially involve any major swing in Soviet and foreign policies.



## ANARCHISM

**Anarchism explained.** Anarchism is the doctrine that political authority, in any of its forms, is unnecessary and undesirable. The State is regarded as the embodiment of force employed in the government of the community. Liberty is supreme in the Anarchist creed, but liberty is sought by abolishing the State and all its institutions exercising forcible control over the individuals. "The liberty of man," Bakunin says, "consists solely in this, that he obeys the laws of Nature, because he has himself recognised them as such, and not because they have been imposed upon him externally by any foreign will whatsoever, human or divine, collective or individual". The Anarchists will, therefore, like to get rid of the State and all its instruments which are the symbols of force.

Anarchism in this sense is no new doctrine. Some of the Stoics of ancient Greece questioned the moral and social legitimacy of State authority and held that good life could be obtained only "in a social condition in which men are able to act freely in response to natural instincts of sociability and justice." Restrictions imposed by the State were also resented by various religious sects during the Middle Ages. It was maintained that religion itself was a sufficient guarantee for a just and orderly civil life and men united in their Christian faith should be permitted to live under the control of their faith alone without any impositions from the government. Many poets and philosophers in all lands and climes and at all times contemptuously talked of the coercive power of the State and yearned for that free atmosphere of liberty wherein a just, happy and free social life was the desideratum. Disparagement of the political authority was more common in the seventeenth and eighteenth centuries when man's quest for freedom and equality brought him into clash with the despotic authority of the rulers. Individualism, too, in the nineteenth century condemned the State by regarding it as a necessary evil and advocating for the minimum exercise of political authority in order to secure maximum liberty for the individual.

The Socialist headed by Karl Marx regarded the existing State and its machinery an instrument of exploitation, because a part of the community had succeeded in defrauding their fellows of the just reward of their labour. The theory of Socialism is a revolt against the State and the capitalistic structure of society which it breeds. The modern Anarchism, too, is an indictment of Capitalism on economic and moral grounds and is, in an important aspect, akin to Socialism. Originally, the Anarchists were the followers of Karl Marx and they worked together with him for overthrowing the capitalist society and transferring the ownership of land and capital to the community. But Karl Marx and Michael Bakunin sharply differed on the methods by which a classless and stateless society could be reached. Karl Marx, and his English and German followers, considered the continuance of the State as an important phase of the revolutionary stage when capitalism had been overthrown. Marx had no love for the State. But true to his belief in evolution, he wished the proletariat to gain political power, and turn the bourgeois into the proletariat State, which in its turn, would "wither away" after all classes had been abolished. Marx, thus, held that a dictatorship of the

proletariat would have to precede the establishment of a Communistic society. But Bakunin rejected Marx's programme of political action. Bakunin expressed horror of the State in any form whether proletariat or otherwise. His view was that man had already been prepared, by a long and arduous evolutionary development, to live a life free from governmental authority, and that it was only necessary to stage a revolution that would destroy the existing state to achieve a free, independent and idyllic existence. "The state", he held, "will always be an institution of domination and of exploitation—a permanent source of slavery and misery". He further maintained that Marx was leading the International to a dangerous path, where exploitation and misery would increase rather than diminish. The proletariat State of Marx's conception, he asserted, "will be the sole capitalistic, the banker, the money-lender, the organiser, the director of all the national work, and the distributors of all its products". In brief, the State had no use for Bakunin in any form and at any stage in the development of free associations. Marx regarded Bakunin's view "as arrant nonsense of the radical and utopian kind which had long damaged the socialist cause." It was, he thought, a far cry from his own "scientific, practical, and hardheaded proposals."

It was an unbridgeable gulf between the two and both Marx and Bakunin tried to eclipse each other. Bakunin commanded a substantial measure of support and the Basle conference in 1869 of the International was a victory for him. Marx tried to reverse the situation. He succeeded in securing the removal of the headquarters of the International to New York in 1872, and subsequently managed the expulsion of Bakunin and his associates from the organisation. Bakunin, then, gave a definite shape to his ideas, and established a distinct school of thought known as Anarchism.

**Pierre-Joseph Proudhon** (1809-1865). Proudhon is generally called the "father of anarchism, although he called himself a socialist". He had wide differences with Karl Marx. He regarded Communism as utopian. "I am opposed to Communism," he wrote, "and if I am now considered as being the less advanced of the socialists, it is because I have left utopia, whilst the socialists are still in it." Communism, he said, resulted in a caricature of property. In fact, Proudhon was so much vehement in his criticism of Communism that he regarded it not science but the annihilation of science. "It is incapable of finding a formula," he said, "of distribution and of organisation. It is eclectic, unintelligent—it is the religion of misery. It neither thinks nor does it reason. It does not know how to organise, produce and distribute: it suspects labour and is afraid of justice. It borrows its ideas from the most ancient, mystic, obsolete, vague and undefinable tradition. Communism means privation everywhere and always."

Proudhon was against the State, since it had evolved out of the system of private property and had also supported the inequities in society. And what a paradox, Proudhon was not against the institution of private property itself. He even favoured the inheritance of property. He condemned it because it brought social injustice, and consequently privileges

and authority. And since the State supported those inequities it was the vehicle of oppression. "Government of man by man in every form is oppression. The highest perfection of any society is found in the union and anarchy". Proudhon was the author of the term anarchy and his followers tended towards a theory of anarchy.

Liberty, Proudhon held, was not the daughter but mother of order. A society of his conception would consist of individuals and voluntary associations and in this society prevailed liberty and freedom for all without restraint. The individuals and associations would engage themselves in productive enterprises with the aid of gratuitous credit supplied by co-operative banking associations. Karl Marx condemned Proudhon as a petit-bourgeois.

**Count Michael Bakunin** (1814-1876). In the same sense in which Marx is regarded as the founder of scientific Socialism, Bakunin is also regarded as the founder of scientific Anarchism. Bakunin, however, unlike Karl Marx, does not give us a coherent and systematic body of doctrine. It was left to his follower Kropotkin (1842-1921) to give refinement to the theory of Anarchism and present it in a logical manner. Both Bakunin and Kropotkin were Russians and the theory of Anarchism owes its fuller development chiefly to Russian thinkers.

The whole evolution of man, according to Bakunin, is from a condition in which animal impulses and physical restraints control the conduct of man towards conditions in which perfect liberty and ideal happiness prevail. Political authority, in any form, private property and religion are the conditions relating to the lower stage of man's development, because all of them are associated in one way or another, with physical desires and fears; private property cultivates man's interest in material goods; the State supports private property through its physical compulsions; religion sustains both State and property, and also appeals to man's desire for physical comfort and to his fear of physical suffering after death. These institutions—private property, the State, and religion—which are the characteristic expressions of the primitive nature must ultimately disappear as a result of the operation of the natural laws of human evolution.

Bakunin's attitude towards the State is explicit and uncompromising. In his book, **God and the State**, he says: "The State is not society, it is only an historical form of it, as brutal as it is abstract. It was born historically in all countries of the marriages of violence, rapine, pillage, in a world war and conquest, with the gods successively created by the theological fantasy of nations. It has been from its origin, and it remains still at present, the divine sanction of brutal force and triumphant inequality." Despotism, he holds, is the essence of the State whatever be its form. Democracy and democratic devices are sheer cloak to hide the hypocrisy of the State oppression. The economically powerful class moulds and shapes the machinery of the government to their advantage by employing the economically weak classes as pawns on the chess board of political intrigue. The system of (private property is "both the ground of existence and the consequence of the State.") To the millions of workers, it brings economic dependence, laborious toil, ignorance, and social and spiritual immobility; for the few wealthy, it provides superfluous luxury and special opportunity for physical and artistic and intellectual enjoyment."



Apart from the perpetuation of an oppressive economic condition, the essential vice of the State is that it debases man morally and intellectually. A typical passage from Bakunin's **God and the State** is illustrative of it. He says: "The State is authority; it is force; it is the ostentation and infatuation of force. It does not insinuate itself; it does not seek to convert.... Even when it commands what is good, it hinders and spoils it, just because it commands it, and because ever, command provokes and excites the legitimate revolt of liberty; and because the good, from the moment that it is commanded, becomes evil from the point of view of true morality, of human morality (doubtless not of divine), from the point of view of human respect and liberty. Liberty, morality and the human dignity of men consist precisely in this that he does good, not because it is commanded, but because he conceives it, wills it and loves it." Political authority also demoralises and degrades those who are entrusted with the power to exercise it. Power is intoxicating and it corrupts even the best intentioned natures and once in power they would endeavour to retain it at all costs and by all means. They become flushed with an attitude of superiority. "Among those who exercise the power, natural sentiments of co-operation and fraternity are supplemented by traditions of prerogative, class differentiation, and sacrifice of individual welfare to the interests of public office. Thus the State makes tyrants or egoists out of the few and servants or dependents out of the many."

Bakunin regarded religion an evil, because it permits evil institutions, and it is, also, incompatible with man's better nature. Religion, he held, is used as a cloak by the possessors of economic and political privileges to perpetuate their vested interests and to sanctify their unnatural superiority. "It diverts man's interest and effort from important affairs in the actual world of humanity; develops his fancy, superstition, and credulity; and aborts his reason and insight." Bakunin, as such, pleads that religious faith should be displaced by science and knowledge—"The fiction of future divine justice by the actuality of present human justice".

It follows that Bakunin will not admit of any privileged position or class, for "it is the peculiarity of privilege and of every privileged position to kill the intellect and heart of man. The privileged man, whether he be privileged politically or economically, is a man deprived in intellect and heart." Here is the summing up which Bakunin himself gives. He says, "In a word, we object to all legislation, all authority, and all influence, privileged, patented, official and legal even when it has proceeded from universal suffrage, convinced that it must always turn to the profit of a dominating and exploiting minority, against the interests of the immense majority enslaved."

Bakunin's methods of realising his programme are revolutionary. He makes all haste to sweep away the political and social institutions that prevent the realisation of his plans for the future. He advocates violence pure and simple, with conspiracies, systematic assassinations and the like. "Our task is," Bakunin unequivocally asserts, "terrible, total, inexorable and universal destruction." The revolutionist of Bakunin's conception is a consecrated man, who will allow no private interests or feelings, and scruples of religion, patriotism or morality to turn him aside from his mission the aim of which is by all available means to overturn the exist-

ing State and society. And the emerging society will be a free federation of free associations wherein authority of any kind does not prevail.

**Contribution of Kropotkin.** Peter Kropotkin (1842-1931) is the scientific interpreter of new Anarchism and he sought to give evolutionary and historical bases to his doctrines. The laws of evolution, he holds, apply alike to animals and their groupings and to men and human society. Kropotkin places clear emphasis upon two phases of natural evolution. The first is that in the normal course of the life of an individual, vital forces operate in an orderly manner. But when these are interfered with, it may account for friction. In the beginning, the interference may accumulate; eventually, however, it leads to resistance of inconceivable strength. This resistance is justified as a necessary means of bringing natural processes back into their normal course. In the social life, too, there is slow and steady progress and the course of natural evolution runs its way smooth. But the normal course of social evolution may be obstructed by "misinformed or interested opposition" for gaining selfish interests. "On such occasions there is the need for great events that breaks the immediate course of history and draw mankind out of old ruts into new roads, but still on the main highway."

The second and more important principle of Kropotkin's evolutionary theory is the predominant part played in evolution by the co-operative as distinguished from the competitive nature of animals and men. The law of organic evolution is primarily a law of mutual aid, not of conflict. Kropotkin, accordingly, argued that the law of mutual aid manifests itself in social life, in the principle of equality, justice and social solidarity. It inculcates the spirit of: Do to others as you would have it done to you in like case. This golden rule of social conduct is the necessary condition for the attainment of the goal of social evolution.

Then, what are the hindrances to the progress of human society? Kropotkin catalogues three hindrances: the State, the property, and religion.

The State, Kropotkin holds, is without any natural or any historical justification. It is of recent origin. The State and its law came into existence only when society became divided into two hostile and opposing economic classes, one of them seeking to exploit the other. It now exists to safeguard the interests of the minority of property-owners who control the government and obedience to its laws is obtained by the coercive power exercised by that ruling minority. The State, by its very nature, is opposed to man's natural co-operative instincts. He grows and develops only in a free atmosphere and by the spontaneous performance of his faculties and not by the spoon-feeding of the State. Restriction and restraint, if at all they are needed, must be self-imposed acts. "The people, acting spontaneously, can defend themselves against domestic brigands and foreign aggressors; history shows that standing armies have always been defeated by citizen armies and that invasion is more effectively thwarted by popular uprisings. Nor is government successful in protecting us against ill-disposed persons at home; prisons are more effective in spreading vice than in checking it; the cultural and benevolent activities of government are superfluous; when men are released from their economic and political

dependence, voluntary activity will supply all that is needed for both education and charity."

In the same strain Kropotkin condemns private property. He says that production is the result of collective co-operative efforts of all the individuals engaged in the act of production, either directly or indirectly. Moreover, the existing stage and advancement of industry is the cumulative result of the discoveries, inventions, and labours of many past centuries plus the present activities of varied and scattered groups of men. "Science and industry, knowledge and application, discovery and practical realization leading to new discoveries, working of brain and of hand, toil of mind and muscle—all together. Each discovery, each advance, each increase in the sum of human riches, owes its being to the physical and mental travail of the past and present. By what right, then, can any one whatever appropriate the least morsel of this immense whole and say—This is mine, not yours." It is, therefore, a heinous sin against justice that a small minority of the people retain the major benefit of the combined wealth produced by the collective efforts of the multitudes of men of both present and past generations. Kropotkin, then, proceeded to show the results of private property. Among the masses, he revealed is "want and misery, millions unemployed, children of retarded growth, constant debts for the farmers; among the wealthy few—prodigality, ostentation, idleness, leading to the pursuit of the coarsest pleasures, debasing the press, and inciting war". What a real and matter-of-fact picture. This misery for the many and plenty for the few, Kropotkin associates with the political system which functions to protect private property.

Like Bakunin, Kropotkin rejects religion both on scientific and religious grounds. Religion, he said, is either a primitive myth and a rude attempt at explaining nature, or "it is an ethical system which, through its appeals to the ignorance and superstition of the masses, cultivates among them a tolerance of the injustices they suffer under the existing political and economic arrangements". According to Kropotkin religion is nothing but a social morality that spontaneously develops among the people who live together. Such a natural religion, he believed, is essential to any society, in the sense that no "society can exist without certain moral habits and rules that evolve unconsciously and as a consequence of which men respect one another's interests and rely upon one another's words". This kind of morality, he said, is anterior and independent of formal religious creeds, and it is true religion, because it endures whereas traditional religions and systems of philosophy pass away.

**Main Features of Anarchism.** We, thus, find the following main features of Anarchism:

(1) The social, economic and moral evils from which the society suffers are intolerable. They can neither be cured nor alleviated by any action of the State which is always an instrument of personal or class domination.

(2) Human nature is essentially good, but is corrupted by evil institutions, the State, private property and religion.

(3) The division of labour and other forms of economic co-opera-



tion should always be on a voluntary basis for mutual benefit and advantages rather than contrived for the benefit of the propertied minority.

(4) The new society can only result from a revolutionary change in the individual, his institutional environment, or both. It means destruction of the State and all other institutions connected therewith which aim to protect private property and perpetuate the hypocrisy of religion.

**Methods of Anarchism.** The goal of Anarchism, according to Bakunin and Kropotkin, is to be attained both through evolution and revolution. The inevitable trend of social evolution, it is maintained, is towards the anarchist goal. But this is not sufficient. The evolution, Kropotkin said, must culminate in revolution. A revolution in one country will spread into a general European revolution, probably lasting from three to five years. The revolution in its first phase will be destructive and violent. It means the destruction of all that is commonly understood in the sense of public order; existing governors removed from the seats of their political authority, prisons and forts demolished, armies disbanded and police liquidated, courts and offices removed. "A frightful storm is needed to sweep away all this rottenness, to vivify torpid souls with breath, and to restore to humanity the devotion, self-denial, and heroism, without which society becomes senile and decrepit, and crumbles away." Bakunin justifies bloodshed as a result of "the stupidity of those who will attempt to resist and of the natural feelings of revenge which many, in the first moments of their uprising, will feel towards their first oppressors".

After the political authority had been dissolved, the people will proceed to expropriate private property: peasants expelling land-owners, workers driving out factory owners, those having inadequate homes moving into dwellings that contain surplus. This having been secured, the work of a constructive reshaping of society will begin through a purely voluntary procedure. Establishment of any kind of government, may it be in the form of a transitional dictatorship, will, according to Kropotkin, mean the death of the revolution. "If the dissolution of the State is once started, if once the machinery of oppression begins to weaken, free associations will be formed automatically. When co-operation is not forced by government, natural wants will bring about a voluntary co-operation. Overthrow of the State and a free society will rise on its ruins."

**Organisation of the Anarchist Society.** We do not find in Bakunin's works a clear picture of the society at which he aimed. Kropotkin, on the other hand, in vivid terms explains the organisation of the Anarchist society. When the State disappears, a free society without distinction of race, colour, nationality or belief will be established in its place. Men living together in such a society will no longer be held together by the authority of the government. Every individual in this society will be permitted to labour and enjoy the fruits of his labour on equal terms. Individuals prosecuting the same end will combine into groups and these groups will form larger associations. "A complex interweaving of associations with order everywhere and compulsion nowhere, forms the stuff of which an Anarchist society will be made." These associations and groups

will be for various purposes according to the actual needs and desires and all associations will be formed through voluntary contracts. Local associations may combine into larger territorial combinations, provided that at every stage there will be no compulsion about it. (With each group disputes will be settled by voluntarily established courts of arbitration. The Anarchists really believe that there will be no incitement to anti-social acts as the new social order is based upon principles of freedom and justice.) When and where individuals act anti-socially, "moral influence and sympathetic intervention will normally suffice to suppress them; in the rare cases where this is ineffective, fear of expulsion from the various fellowships, or of forcible intervention, either by individuals or by unorganised mass action, will supply the necessary corrective".

(As regards the economic organisation of the Anarchist society, there will be complete Communism. Society will own the land and all materials and instruments of production.) Kropotkin regarded as fallacious and impracticable the doctrine that productive goods—machinery, factories, land, raw materials, means of transport—should be the ownership of the community, while finished goods—houses, clothing, provisions—should be privately owned. "The house," he says, "that shelters us, the clothing that covers us, the coal and gas we burn, the food we eat, the books from which we draw instruction, are just as necessary and useful for production as are machines, factories, and raw materials."

(Land and other instruments of production will be taken into possession by those persons, acting individually or in freely formed associations, who are willing to use them productively.) Every individual will then be permitted to share freely in the enjoyment of the products to the extent of his need, subject to the condition that he has put in his earnest and best productive efforts. The product will thus be shared only by those who work, and the distribution will be on the basis, not of service, but of need. (Every labourer will be freely allowed to satisfy his need for all that is abundant. Scarce goods will be allotted according to individual needs, with preference for children, the aged, the infirm, and the weak. Under such a system of production and distribution, the Anarchists claim, there will be contentment and sufficiency for all to live in comfort. When people are properly educated in the methods of co-operative life, when there is no inequality between rich and poor to provoke discontent, and no State protection of monopolies to inflame it, interests will rarely conflict, and occasions of disharmony will be few.)

### SUGGESTED READINGS

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|-----------------|--|
| Beer, M.        | : <i>A History of British Socialism.</i>                     |
| Bobber, M.M.    | : <i>Karl Marx's Interpretation of History.</i>              |
| Brameld, T.B.H. | : <i>A Philosophical Approach to Communism.</i>              |
| Chang, H.M.     | : <i>The Marxian Theory of the State.</i>                    |
| Coker, F.W.     | : <i>Recent Political Thought</i> , Chaps. I-IX.             |
| Cole, G.D.H.    | : <i>Socialist Thought, Marxism and Anarchism</i> , 1850-90. |
| Cole, G.D.H.    | : <i>What Marx Really Meant.</i>                             |
| Cornu, Auguste  | : <i>The Origins of Marxian Thought.</i>                     |
| Ebeustein, W.   | : <i>Today's Iams.</i>                                       |

- |                              |  |
|------------------------------|--|
| Hallowell, J.H.              | : <i>Main Currents in Modern Political Thought.</i>  |
| Harmon, Judd M.              | : <i>Political Thought from Plato to the Present,</i><br>Chaps. 19, 20.                    |
| Hook, Sidney                 | : <i>Marx and Marxists.</i>  |
| Hook, Sidney                 | : <i>Towards the Understanding of Karl Marx: A</i><br><i>Revolutionary Interpretation.</i> |
| Laski, H.J.                  | : <i>Communism.</i>  |
| Lenin, V.                    | : <i>Imperialism: The Highest Stage of Capitalism.</i>                                     |
| Lenin, V.                    | : <i>Marx-Engles—Marxism.</i>  |
| Lenin, V.                    | : <i>The Proletarian Revolution.</i>   |
| Lenin, V.                    | : <i>The State and Revolution.</i>   |
| Low, A.                      | : <i>Lenin on the Question of Nationality.</i>   |
| Marx, Karl                   | : <i>Capital.</i>  |
| Mayo, H.B.                   | : <i>Democracy and Marxism.</i>  |
| Mayer, A.G.                  | : <i>Leninism.</i>   |
| Page, S.W.                   | : <i>Lenin and World Revolution.</i>   |
| Plamentz, J.                 | : <i>German Marxism and Russian Communism.</i>   |
| Russell, B.                  | : <i>The Practice and Theory of Bolshevism.</i>  |
| Sabine, G.H.                 | : <i>A History of Political Theory, Chaps. 33, 34.</i>                                     |
| Salter, F.R.                 | : <i>Karl Marx and Modern Socialism.</i>   |
| Seton-Watson, H.             | : <i>From Lenin to Khrushchev: The History of</i><br><i>World Communism.</i>               |
| Stalin, J.                   | : <i>Foundations of Leninism.</i>  |
| Stalin, J.                   | : <i>Problems of Leninism.</i>   |
| Trotsky, Leon                | : <i>The History of Russian Revolution, tr. from</i><br><i>the Russian, 3 Vols.</i>        |
| Wayper, C.L.                 | : <i>Political Thought, Chap. IV.</i>  |
| Webb, Sidney and<br>Beatrice | : <i>Soviet Communism, A New Civilization? 2 Vols.</i>                                     |
| Wells, H.G.                  | : <i>Experiment in Autobiography.</i>  |
| Wolfe, B.D.                  | : <i>Three Who Made a Revolution.</i>  |



## Gandhian Way of Life

**Gandhism and the Gandhian Way.** Gandhi was not an inspired political philosopher destined to propound a new political philosophy and contemplate the world in the light of his creative vision. He was a common man whom accident of circumstances had brought into the political field. But once he drifted to the field of politics, he made his mission sublime through his truthful nature, his sincerity, his tenacity, his industry, and his shrewd practical ability. Through his force of will and vital energy he grew by an evolutionary process to be a superman and has been universally acclaimed as the Knower, the Doer, and the Sayer. He practised old philosophies and adhering to certain fundamental principles based upon truth, he led men to the realization of a better order of society than the destructive and cruel chaos in which mankind have hitherto existed. His technique was to purify politics, to rekindle love in the human breast, to rehabilitate the freedom of man, and to restore and teach the dignity of human labour.

Gandhism is, thus, "not a set of doctrines or dogmas, rules or regulations, injunctions or inhibitions, but it is a way of life. It indicates a new attitude or restates an old one towards life's issues and offers ancient solution for modern problems." There is no *ism* in Gandhi. *Ism* means any distinctive doctrine. Gandhi never claimed finality for his opinions. He was always experimenting with truth. He styled his activities as search for, or experiments with, truth." Consistency, Gandhi said, "is a hobgoblin." No theory guided his thoughts and actions. He always strove to keep his mind open and he very often differed with himself. There was no rigidity with him and his life was an unending experiment. Gandhi himself had told the members of the Gandhi Sangh at Saoli in March 1936: "There is no such thing as 'Gandhism' and I do not want to leave any sect after me. I do not claim to have originated any new principle or doctrine. I have simply tried in my own way to apply the central truths to our daily life and problems. The opinions I have formed and conclusions I have tried at are not final. I may change them to-morrow. . . . I have nothing to teach to the world. Truth and non-violence are as old as the hills. All I have done is to try experiments in both on as vast a scale as I could do. In doing so I have sometimes erred and

1. Sitaramayya, P., *Gandhi and Gandhism*, Vol. I, p. 35.

2. Kripalani, J.B., *The Gandhian Way*, p. 159.

learnt by my error. . . . Well, all my philosophy, if it may be called by that pretentious name, is contained in what I have said. You will not call it 'Gandhism'; there is no **ism** about it."

There is, therefore, no such thing as Gandhism. It is only a Gandhian way and outlook<sup>3</sup> which is neither rigid nor formal nor final. The things he said had been said before; the truth he uttered, or even the principles he claimed, had been said and practised in earlier days also. He held these cardinal principles—truth and non-violence—religiously and based all his transactions on these principles. Gandhi's originality lies in the application of these principles on a large mass scale covering the whole of life, individual and social, moral and material. No one before him had ever done so. The principles of truth and non-violence had been previously applied on individual scale to mould personal life and acts. But for Gandhi to separate the individual from society was to do violence to both. The individual and society, in his opinion, act and react upon each other and have to be raised simultaneously.

A casual reference may be made to the statement of Gandhi which he made at a public meeting at Karachi soon after the Gandhi-Irwin Pact had been concluded, and just before the Karachi Session of the Congress. Gandhi is reported to have declared that "Gandhi may die but Gandhism may live for ever".<sup>4</sup> "Apparently," says Dr. Sitaramayya, "he then and there coined the term **Gandhism** as an expression which succinctly but comprehensively, summarises the philosophy that underlies his cult of truth and non-violence."<sup>5</sup> The Gandhi-Irwin Pact, or the Delhi Pact, as the biographer of Lord Irwin calls it, was a triumph of truth and violence. It was a tribute to his power of **satyagraha**, because the Pact, according to Gandhi, had established the basis of equality in principle, between India and Britain.<sup>6</sup> It was a new basis of relationship between the two countries, though the Pact neither promised independence nor Dominion Status. The success of the Pact depended upon the behaviour of the British Government and the outcome of the Round Table Conference. And Gandhi was doubtful of the good results. "There is every chance of my returning empty-handed," he said on going aboard the **Rajputana** which took him to London to participate in the Second Round Table Conference as the sole delegate of the Congress.

It will be too much to assert that Gandhi had claimed to establish a distinctive doctrine of his own when he said "Gandhism may live for ever". The only logical meaning which can be given to it is that he desired to keep the torch of truth and non-violence burning for ever and glowing the path of true **satyagrahis** in reaching the goal of independence, and establishing a non-violent society or **Ram Rajya**. Perhaps, Gandhi was in a mood to remind his listeners at the Karachi meeting of the ordeals ahead of them, because the moment the Pact was signed, com-

3. *Refer to Gandhian Outlook and Technique*—A Verbatim Report of proceedings of the Seminar on the contribution of Gandhian outlook and techniques held in New Delhi under the auspices of U.N.E.S.C.O. in January 1953.

4. Sitaramayya, B.P., *Gandhi and Gandhism*, Vol. I, p. 37.

5. *Ibid.*

6. Louis Fischer, *The Life of Mahatma Gandhi*, Vol. I, p. 34.

plaints of its non-fulfilment were levelled against the Government and Gandhi was again negotiating with the Viceroy, this time the new Viceroy, Lord Willingdon, well-known in India for his professions and deeds.

It is, therefore, presumptuous to give the statement a meaning other than the natural explanation in the context of the circumstances. There was no **Gandhism** with Gandhi. Being a growing and evolving personality there could be no finally fixed modes of thought and action for him. As regards the two cardinal principles of **truth** and **non-violence**, there was no rigidity for him in their application. Even his closest associates could not make any positive forecast of how he would act under a particular set of circumstances. Gandhi himself freely admitted that **Ahimsa** might be applied differently in differing circumstances and situations. In fact, all **isms**, as Acharya Kripalani rightly says, "come into existence, not at the initiative of those in whose names they are preached and promulgated, but as the result of limitations imposed upon the original ideas by the followers. Lacking the creative genius, the followers systematise and organise. In so doing they make the original doctrines rigid, inelastic, one-sided and fanatical depriving them of their original freshness and flexibility, which are the signs of youth." "Gandhi simply indicated the direction without trying to fill in the details finally or for all times to come. It was only a Gandhian way and outlook. When his impatient followers fill in the details making his ideas and technique rigid, it becomes Gandhism. Then, the principles he preached and the modes he practised become rigid and extreme. Gandhi had always condemned extremism. "If only these isms (as Babu Bhagvandas puts it) would shed their 'extremism' and taken, instead, a little genuine spiritual religion and a few psychological principles," Gandhi said, "they would be at once shaking hands with each other or even running into each other's arms. All these ideologies and isms have great things to their credit, all have great crimes to their debit too." Gandhi's views are equally applicable to all varieties of **isms**, religious, economic, and political.

**Background of Gandhian Outlook.** The **Gita** ranks the foremost in moulding Gandhi's outlook. Since 1889, when he first read it in Sir Edwin Arnold's translation, the **Gita** had always been his spiritual reference book, in fact, his daily and never-failing guide. "When doubts haunt me, when disappointments stare me in the face," declared Gandhi, "and I see not one ray of light on the horizon, I turn to the **Bhagavad Gita**, and find a verse to comfort me; and I immediately begin to smile in the midst of overwhelming sorrow. My life has been full of external tragedies and if they have not left any visible effect on me, I owe it to the teachings of **Bhagavad Gita**." Gandhi was pre-eminently a man of action. The **Gita** made him so. He remained twenty years fighting the battle of Indian rights in South Africa. He won it. The rest of his life is a continuous struggle against iniquity and injustice, social, economic, and political. He won for India political independence and brought about a new outlook in the country in the solution of her social and economic problems. He was a **Karma yogin**, a practical man of action who struggled without the desire for results. His was selflessness in action consist-



ent with the teachings of the **Gita** and he held to them steadfastly. The message of the **Gita** is:

"Act thou, O Dhananjaya (Arjun), without attachment, steadfast in yoga, even-mindedness in success and failure, even-mindedness in yoga."

Even-mindedness or balanced state of mind can be obtained only by killing all passions and by renouncing desires than objects. Renunciation gives one the inner peace, the spiritual poise, to achieve results. Gandhi did not agree that warfare could be consistent with renunciation. "Let it be granted," he wrote in 1929, in an introduction to the Gujarati translation of the **Gita**, "that according to the letter of the **Gita** it is possible to say that warfare is consistent with renunciation of fruit. But after forty years' unremitting endeavour fully to enforce the teaching of the **Gita** in my own life, I have, in all humility, felt that perfect renunciation is impossible without perfect observance of **Ahimsa** in every shape and form." Then, comes the revolutionary Gandhi who declared that his loyalty to the **Gita** entitled him to amend such a notion. He very often "refused to be bound by uncongenial texts, concepts and situations".

Gandhi's faith in **Ahimsa** was both hereditary and environmental. In no other part of India was the hold of Jainism on the life of the people greater than Gujarat where Gandhi was born and brought up. His father, though a **Vaishnava**, freely associated with Jain monks. The Jain monk, Becharji Swami, helped Gandhi to go to England for his studies. Before he left for London, Becharji Swami administered an oath to Mohandas who then solemnly took three vows: not to touch wine, woman or meat. Jainism, therefore, had perceptibly coloured Gandhi's thoughts and shaped his actions. The influence of Buddhism, too, was in no way less. It was, under these circumstances, natural that Gandhi should have a firm conviction that the practice of **Ahimsa** was essential for the state of non-attachment. And he had been striving to become a **Karma yogi** soon after reading the **Gita** and especially during his stay in South Africa. He, indeed, fought the battle of **Ahimsa** in that country and the success he achieved there left indelible impressions on him about its efficacy.

Gandhi perfected the science and art of **Ahimsa**, extended its scope to all activities in life, and himself attained the status of **sthitaprajna**, the ideal man of the **Gita**; and the ideal man of the **Gita** is one who has abandoned desire and freed his mind from all worry, who receives pleasures and pains alike and is no longer subject to the passion of fear, anger and hatred, who is completely detached and is unconcerned with good or bad results.

John Ruskin's **Unto This Last** had also been one of the transforming influences which shaped Gandhi's views. This book was given to Gandhi by Henry S.L. Polak, an Assistant Editor of the **Transvaal Critic**. "This book," he said in 1946, "marked the turning point in my life." He immediately decided to change his "life in accordance with the ideals of the book". Gandhiji learnt three lessons from it:

1. That economy is good which conduces to the good of all.
2. That a lawyer's work has the same value as the barber's,

inasmuch as all have the same right of earning their livelihood for their work.

3. That the life of labour, i.e., the life of the tiller of the soil and the handicraftsman, is the life worth living.<sup>8</sup>

While in Volksrust prison in October 1908, Gandhi read Henry David Thoreau's famous essay on Civil Disobedience. It has often been said that Gandhi borrowed the idea of *satyagraha* from Thoreau. But he denied it in his letter, dated September 10, 1935, addressed to Shri P. Kodanda Rao of the Servants of India Society. Gandhi wrote, "The statement that I had derived my idea of Civil Disobedience from the writing of Thoreau is wrong. The resistance to authority in South Africa was well advanced before I got the essay of Thoreau on Civil Disobedience."<sup>9</sup> He, however, regarded it as "masterly treatise" and admitted that "it left a deep impression" on him.

The Rev. J.J. Doke calls Gandhi a disciple of Tolstoy.<sup>10</sup> Gandhi also considered himself "a devoted admirer who owes much in life to him." In his letter written to Tolstoy on April 4, 1910, Gandhi described himself "as humble follower of yours". He read Tolstoy's *The Kingdom of God is Within You* at a time when he was passing through a crisis of scepticism. He had not by then completely surrendered himself to non-violence and accepted it as a creed in the solution of all problems in life. But "its reading," says Gandhi, "cured me of my scepticism and made me a firm believer in *Ahimsa*."

Tolstoy's philosophy is called Christian Anarchism. It is the application of the teaching of the Sermon on the Mount to the solution of the modern social, economic and political problems. The essence of Christ's teaching and the one adequate solution for human problem is, according to Tolstoy, love. "A Christian enters into no dispute with his neighbour, he neither attacks nor uses violence; on the contrary, he suffers himself, without resistance, and by his very attitude towards evil not only sets himself free, but helps to free the world at large from all outward authority." The Christian Anarchist, Tolstoy, makes love as the basis of his principle of non-resistance.

The *Gita* and the Sermon on the Mount had led Gandhi to the same conclusion. "Next to the late Rajchandra,"<sup>11</sup> wrote Gandhi, "Tolstoy is one of the three moderners who have exerted the greatest spiritual influence on my life, the third being Ruskin."<sup>12</sup> Tolstoy preached peaceful, painful refusal to serve or obey evil governments. Gandhi also preached the same. In his letter to Gandhi dated April 25 (May 8), 1910, Tolstoy

8. Gandhi, M.K., *The Story of My Experiments With Truth*, Vol. II, pp. 107-08.

9. M.K. Gandhi, *An Indian Patriot*, p. 3.

10. *Young India*, Vol. I, p. 652.

11. Rajchandra was the poet-jeweller and a distinguished reformer of Bombay. Gandhi came in intimate contact with him after his return from England. He not only influenced Gandhi by his moral earnestness and deep religious nature, but helped him in the study of Hindu religion.

12. *Young India*, p. 652.

wrote, "I just received your letter and your book, **Indian Home Rule**. I read your book with great interest because of the things and questions you treat in it; passive resistance is a question of the greatest importance, not only for India, but for the whole of humanity."

**Religion and Politics.** Gandhi's religion made him political and his politics was religious. This is in essence the Gandhian outlook. "There are no politics," said Gandhi, "devoid of religion. Politics bereft of religion are a death trap because they kill the soul." To him, therefore, religion and politics were not apart from each other than body and soul. Religion was the very breath of Gandhi's being. He says, "At the back of every word that I have uttered since I have known what public life is, and of every act that I have done, there has been a religious consciousness and a downright religious motive."

By religion, Gandhi did not mean any particular creed. He believed in an all-pervading God. His God was Truth. His Truth was knowledge and where there was true knowledge there was bliss. He did not merely say that "God is truth", but also said that "Truth is God". Gandhi was, accordingly, a seeker after truth and his God manifested Himself in Truth and Love. Love and **Ahimsa** were synonymous for him. Without **Ahimsa**, he said, it was not possible to seek and find truth. Both are the obverse and reverse of the same coin—one is the means, the other is the end. Whoever acts on these principles was for him a religious and spiritual person whether he believed in God or not, whether he was a Jew or a gentile, a heathen or a Christian, a Muslim or a Kafir. Gandhi's God and religion was, thus, a thing of the heart. It resided in every human heart and it must be evolved by each out of himself as it is always within us. "The ultimate definition of religion," he concluded, "may be said to be obedience to the Law of God. God and His Law are synonymous terms. Therefore, God signifies an unchanging and living being. No one has ever really found him. But **Avtars** and prophets have, by means of their *tapasya*, given to mankind a faint glimpse of the eternal law and assigned to each one amongst us the work of the moral scavenger—so as to clean and purify our hearts and get them ready," ready for action and service of mankind in removing iniquity and injustice.

Gandhi's religion, in short, means, "belief in the ordered moral government of the universe".<sup>13</sup> It is identical with morality.<sup>14</sup> It is practical and universal and provides a basis for all activities of man. He explained to the Christian pilgrims, who met him at Wardha, the motive of his work. Gandhi said, "My motive has been purely religious. I could not be leading a religious life unless I identified myself with the whole of mankind; and this I could not do unless I took part in politics. The full gamut of man's activities today constitutes an indivisible whole. You cannot divide social, political and religious work into watertight compartments. I do not know any religion apart from human activity. It

13. *Harijan*, February 10, 1940.

14. *My Experiments With Truth*, op. citd., Vol. I, p. 5. Also refer to M.K. Gandhi's *Ethical Religion*, pp. 23-24.



provides a moral basis to all other activities which if they would otherwise lack reduce life to a thing of sound and fury signifying nothing."<sup>15</sup>

Gandhi's mission was to moralise man and society. But a moral man and a moral society could only be obtained when truth stood arrayed against all tyranny whether that tyranny was of the State or society or of the individual. Politics was, accordingly, an unavoidable evil for him.<sup>16</sup> "If I take part in politics," he said, "it is only because politics today encircles us like the coils of the snake from which one cannot get out no matter how one tries. I wish to wrestle with the snake.... I am trying to introduce religion into politics." Political freedom, he thought, was essential for the emergence of a non-violent State and a non-violent society. "He who does not know what patriotism or feeling for one's country is, does not know his true duty or religion" and "those who say that religion has nothing to do with politics, do not know what religion means."<sup>17</sup>

**Gandhian Outlook Explained.** Gandhi was a political engineer whose domain was action, first in South Africa and later in India. He was not a philosopher or thinker in the sense that he thought out a philosophy of life and chalked out a programme of action which he left to others to study and implement it. He worked and experimented, identifying himself always and completely with the people. He was one of them and at one with them devising means for their social, economic and political emancipation. All through his public life his was a relentless war against evil, evil in all aspects and there was no department of life, particularly embracing the life of Indians, which he did not touch, which he did not influence and in which he did not make his own contribution. Dr. Sitaramayya gives a graphic description of Gandhi. He says, "Gandhi lives for others. Society is Gandhi's temple, service is his sole form of worship, humanity is his single passion. Truth is his one God and non-violence is his only means of attaining it. His appeal is to the universal of which local forms an integral factor."<sup>18</sup> Gandhi was, thus, an embodiment of virtue and being a man of action and a firm believer in *nishkama karma*, action without the desire for the result, his mission in life was to strive for justice for all men; freedom for all nations to develop their own resources according to their own genius; freedom for individuals within nations, that is, complete freedom, no matter what colour, creed, what religion or political views they have; freedom from disease, hunger and poverty; in a word complete freedom for all so that each individual could attain his highest innate capacity for physical, psychological, and cultural development.

In his attempt to realise a better ordering of human society, Gandhi devised a new moral strategy; the method of regulating along non-violent lines, group life in its political, economic, national and international aspects. He condemned the methods hitherto employed to solve the group problems, because modern group life has degraded both the individual

15. *Harijan*, December 24, 1933, p. 393.

16. *Ibid.*

17. *My Experiments With Truth*, *op. citd.*, Vol. II, p. 591.

18. *Gandhi and Gandhism*, *op. citd.*, Vol. I, p. 35.

and social morality. The individual is asked to play a dual and contradictory role and two different and conflicting moral standards regulate his conduct. As a citizen, he is enjoined to act as a good neighbour and to regulate his social conduct on the basis of natural trust, co-operation, truth and non-violence. As a member of a group and a nation, he is enjoined to consider other groups and nations as actual or potential enemies and his conduct is marked by selfishness, distrust, fraud, violence and war. These differing moral standards create conflicting loyalties and when "loyalties cannot be harmonised, they create internal and external conflicts". In the individual "they create a split personality. Conflicting moral standards produce social, economic and political contradictions and maladjustments and cause violence, revolution and war."<sup>19</sup>

Gandhi's solution for the present state of confusion is the necessity to moralise group and political life, "which under the complexity of modern conditions encompasses the whole of our existence". There cannot be two consciences of man, one individual and social and another political. The same code of morality should be observed in all spheres of human activity. It must be considered as wrong and immoral to lie, cheat, exploit or kill fellow beings for political, economic and ideological as for any other reasons. "We have to make truth and non-violence," said Gandhi, "matters not merely for individual practice but for practice by groups, communities and nations. That at any rate is my dream."<sup>20</sup>

In order to work out a synthesis between the individual and group, between social and economic and political life, Gandhi begins with the individual whose moral regeneration he deemed as the first requisite. Gandhi's *Swaraj* was concerned with the individual's inner freedom as well as his external freedom in society. His was, therefore, a simultaneous reform of the individual and society. True morality must manifest itself in every action of the individual as individual and also as a member of society. The individual and society both act and react upon each other. "I do not believe," said Gandhi, "that the spiritual law works in a field of its own. On the contrary, it expresses itself through the ordinary activities of life. It thus affects the economic, social and political fields."<sup>21</sup> Gandhian outlook may, as such, be reduced to a simple formula: If you have to reform yourself you must do so while reforming society. There cannot be a divorce between the two.

**Gandhian Technique.** With a view to moralise the individual and society, Gandhi prescribed certain principles or norms to which human conduct must conform. These principles are: truth, non-violence, and scrupulous regard for means. All these principles are inter-connected and, accordingly, supplementary and complementary to one another.

Truth is the first thing to be sought for, because there is no God higher than truth. But truth and non-violence are inseparable and presuppose one another. He who believes in non-violence believes in a living

19. Acharya J. B. Kripalani, A Paper submitted to the U.N.E.S.C.O. Seminar on the contribution of Gandhian Outlook and Techniques, *op. cit.*; Appendix B, p. 352.

20. *Harijan*, March, 1940.

21. *Young India*, September 9, 1925.

God and a living God for Gandhi was truth. Wherever there is truth there is love, and wherever there is violence there is untruth. One who holds to truth is not out to injure or destroy the opponent, but to convert him into an ally. Violence gains nothing. On the contrary, it aggravates the moral disease. It does not lead to the correction of the person on whom violence is perpetrated. Violence, in fact, is likely to kill the initiative of the person concerned and "to destroy" the very possibility of "change of heart" which is the essence of moral regeneration. Use of violence, Gandhi further asserted, not only lowers the victim, but also the user of violent means, because "non-violence is the law of our species as violence is the law of the brute".<sup>22</sup> The evil-doer should be weaned from error by patience and sympathy, i.e., self-suffering. Pursuit of truth means realization of spiritual unity through love and service of all, and love and service of all is non-violence. The use of violence, in any form, Gandhi maintained, offends "the greatest truth, the unity and sacredness of all Beings".<sup>23</sup>

Gandhi did not distinguish between ends and means. He regarded the two as continuous process. He rejected the maxim that the end justifies the means. Every act, he said, is in pursuance of an end. The end is merely the result of a series of acts that are undertaken as means. If each action has its appropriate result, then, a good action creates a good result and a bad action a bad result. Moral means must, therefore, be adopted to achieve desirable results. He likened means "to a seed, the end to a tree; and there is just the same inviolable connection between the means and the end as there is between the seed and the tree".<sup>24</sup> In fact, means are, to him, everything. He believed that "if one takes care of the means, the end will take care of itself".<sup>25</sup> Gandhi so often maintained, "the attempt made to win *Swaraj* is *Swaraj* itself".<sup>26</sup>

Gandhi evolved a way of resisting evil through the organisation of truth and non-violence or *satyagraha*, holding on to truth. The technique of *satyagraha* is Gandhi's unique and distinctive contribution not only to the armoury of political weapons, and the technique of revolution, but to the store of human knowledge and thought as well. It is a new science or a philosophy in action. It was tried and found successful in limited fields and it has the possibilities of being applied in new and wider fields, particularly in the explosive situation of the present-day world affairs. *Satyagraha* is the technique of resisting all that is evil, unjust, impure and untrue and resolving all maladjustments in human relations by love, voluntary suffering and self-purification by an appeal "to the divine spark in the opponent's soul". It is an expression of purest *Ahimsa* or non-violence and it precludes hatred, anger, deception or untruth. To explain it in the words of Gandhi: *Satyagraha* "is a vindication of truth by bearing witness to it through self-suffering, in other words, love".<sup>27</sup> It is the

22. *My Experiments With Truth*, op. citd., Vol. II, pp. 53-54.

23. *Young India*, August 11, 1920.

24. *Hind Swaraj*, op. citd., p. 60.

25. *Harijan*, February, 1939.

26. *Speeches and Writings of M. K. Gandhi*, p. 720, Madras, 1922.

27. U.N.E.S.C.O. Seminar, op. citd., p. 382.



opposite of coercion and is not even akin to passive resistance. It is the weapon of the strongest and the bravest; the true man of God who seeks to conquer evil by truth and to resist physical force by taking suffering on himself instead of inflicting upon the opponent, that is, by love. The **satyagrahi** establishes his spiritual identity with the opponent and awakens in him a feeling that he cannot hurt him without hurting his own personality. The action of **satyagraha**, thus, in the last analysis, proceeds through the technique of "identification" and "involvement". All differences and conflicts between man and man, between group and group, "are sought to be resolved by the mighty weapon of **satyagraha** by lifting these from the gross physical plane to the elevated spiritual and moral plane where they can be adjusted by the union of souls, by the deep calling unto the deep."

**Satyagraha** or Soul force or Love force, as Gandhi calls it, is like a coin on whose face you read love and on the reverse you read truth. "And as a **satyagrahi** never injures his opponent and always appeals either to his reason by gentle argument, or his heart by the sacrifice of self, **satyagraha** is twice blessed: it blesses him who practises it, and against whom it is practised." It has very often been maintained that the organisation of non-violent resistance of **satyagraha** of Gandhi's conception can be practised by only a select few. Gandhi did not agree to it. He said, "My experience proves the contrary. Once its simple principles—adherence to truth and insistence upon it by self-suffering—are understood, anybody can practise it. It is as difficult or as easy as any other virtue."

**Satyagraha**, as a method of redressing group and political wrongs, was first experimented by Gandhi in South Africa with a commendable success. It was again tried on an extended scale and covering many phases in India to achieve national independence. India won the non-violent battle of her independence. It stands unparalleled in history. No revolution for national independence has been as bloodless as the Indian revolution for independence and both the rulers and the ruled parted company in comparative friendliness.

**Satyagraha**, then, is resistance based on moral force as opposed to brute force. It is not passive, but an active non-violent resistance. "With **Satya** (truth) combined with **ahimsa** (non-violence)," said Gandhi, "you can bring the world to your feet. **Satyagraha** in essence is nothing but the introduction of truth and gentleness in the political, i.e., the national life." He further observed that "it is totally untrue to say that it is a force to be used only by the weak so long as they are not capable of meeting by violence.... This force is to violence, and therefore to all tyranny, all injustice, what light is to darkness. In politics its use is based on the immutable maxim that government of the people is possible only so long as they consent either consciously or unconsciously to be governed."

**The Technique of Satyagraha.** The technique of **satyagraha** as corporate action may take the following forms:

1. **Non-co-operation.** Oppression and exploitation, Gandhi argued, are made possible by co-operation, willing or forced, of the oppressed in their own exploitation or oppression through cupidity, ignorance or fear.

If all people ceased completely to co-operate with an unjust or tyrannous system, it must ultimately collapse. "Even the most despotic government," Gandhi maintained, "cannot stand except for the consent of the governed, which consent is often forcibly procured by the despot. Immediately the subject ceases to fear the despotic force, his power is gone." What is true of governments also applies to other exploiting groups and organisations. Non-co-operation with evil takes the form of self-purification in the *satyagrahi* himself and the withdrawal on his part of co-operation from the unrighteous and unrepented institution which embodies the evil. Non-co-operation, thus, stresses the purity of means and the purity of ends as well as the purity of motives and intentions.

The non-violent methods which *satyagrahis* may employ to develop the non-co-operation movement are: **hartal**, social ostracism, and picketing.

(i) **Hartal.** **Hartal** means cessation of business as a measure of protest. Its object is to strike the imagination of the people and the government or the institution involved. Two things are necessary here. In the first place, the **hartals** should not be frequent, otherwise they would cease to be effective; and, secondly, they should be strictly voluntary, the result of persuasion and other non-violent methods of propaganda.

(ii) **Social Ostracism.** This is tantamount to social boycott against blacklegs who defy public opinion and do not resort to non-co-operation. Gandhi felt that "in social life it is impossible to avoid ostracism to a certain extent, but it should not be used, except in a very limited sense". It does not mean depriving a person of indispensable social services or to make his life unbearable "by insults, innuendoes and abuse". All this would amount to coercion and non-violence.

(iii) **Picketing.** Picketing must necessarily be persuasive and not coercive. Gandhi had always condemned picketing in the sense of sitting *dharna* and described it as a barbarity and a species of violence. Similarly, he did not approve picketing in the sense "of formation of a living wall of picket" in order to prevent the entry of persons into the picketed place. "The object of peaceful picketing is not to block the path of a person wanting to do a particular thing, but to rely on the force of public opprobrium and to warn and even shame the blacklegs. Picketing should avoid coercion, intimidation, discourtesy, burning or burying of effigies, and hunger-strikes."

2. **Civil Disobedience.** Civil disobedience is the last stage and the most drastic form of non-co-operation. Gandhi called it "a complete, effective and bloodless substitute of armed revolt". He defined civil disobedience as the "breach of unmoral statutory enactments". It signifies "the resister's outlawry in a civil, i.e., non-violent manner." Gandhi put greater emphasis on the word **civil** than on disobedience so that the movement might not become uncivil and violent. "Disobedience to be civil," he said, "must be sincere, respectful, restrained, never defiant, must be based upon some well understood principle, must not be capricious and must have no ill will or hatred behind it." And as it is an effective and more drastic remedy, it should be employed with the greatest caution and most sparingly. "... Its use must be guarded by all conceivable restric-

tions. Every possible provision should be made against an outbreak of violence or general lawlessness. Its area as well as scope should also be limited to the barest necessity of the case." Gandhi even recommended its practice by a select few "in the first instance at any rate". Quality, according to him, should be the prime consideration and the selection of laws to be broken should be made not by each *satyagrahi* himself, but by the leader or some centrally constituted body of expert *satyagrahis*.

3. **Hijrat.** *Hijrat* means voluntary exile from the permanent place of residence. Gandhi recommended *Hijrat* to those who feel oppressed, cannot live without loss of self-respect in a particular place and lack the strength that comes from true non-violence or the capacity to defend themselves violently.<sup>28</sup> He advised *Hijrat* to the *satyagrahis* of Bardoli in 1928, and of Limbdi, Junagad and Vithalgad in 1939. In 1935, he advised the Harijans of Kaitha to migrate as the caste-Hindus were regularly terrorising them and this had caused extreme despondency among the Harijans.<sup>29</sup>

4. **Fasting.** The most potent form of *satyagraha* is fasting. Gandhi called it a fiery weapon,<sup>30</sup> and claimed to have reduced it to a science.<sup>31</sup> At the same time, he characterised it to be the most dangerous technique, because it could so easily be misapplied. Fasting may be for penance and self-purification, or it may be a means of resisting injustice and converting the evil-doer. But whatever be its purpose, it must be resorted to on rare occasions by one skilled in the art of fasting or under expert guidance.<sup>32</sup> Fasting, according to Gandhi, presupposes that the person who launches on a fast possesses spiritual fitness and a clear vision. It is not the physical act of fasting, but the spiritual content of fast that gives it potency. Then, it requires a high degree of purity, self-discipline, humility and faith on the part of the faster.<sup>33</sup> When it is properly organised, it stirs up as nothing else "sluggish conscience and fires loving hearts to action.... Those who have to bring about radical changes in human conditions and surroundings cannot do it except by raising ferment in society. There are only two methods of doing this—violence and non-violence. Non-violent pressure exerted through self-suffering by fasting.... touches and strengthens the moral fibre of those against whom it is directed."

5. **Strike.** Strike is the weapon of the labour for the redress of their legitimate grievances. Gandhi desired to make his concept of strike entirely distinct from its prototype in the West. He did not accept the proposition that the capitalist class should be eliminated and substituted by labour 'capitalist' class. He envisaged all industry as a joint enterprise of labour and capital wherein both act as mutual 'trustees'. With the trusteeship basis of industrial control, Gandhi inculcated in the labour the attitude that they must regard the industry as a whole as their own and, accordingly, direct their attack against corruption, injustice, inefficiency

28. *Harijan*, February 3, 1940.

29. *Harijan*, October 5, 1935.

30. *Harijan*, October 13, 1940.

31. His statement to the press, September 21, 1932.

32. *Harijan*, March 11, 1939.

33. *Harijan*, October 13, 1940.



and shortsighted greed of the owners. Strikers, he said should be directed in achieving this end rather than in a bid to seize power of owning and controlling industry. The *satyagrahi* strike must be non-violent in spirit as well as in method. "It is voluntary, purificatory suffering undertaken to convert the erring opponent." Moreover, the demands of the strikers must be clear, feasible and just. Further, to ensure non-violence on the part of the strikers, Gandhi emphasised that they must acquire some manual craft so that they might not have to depend upon the strike fund to maintain themselves and their families during a prolonged strike.<sup>34</sup>

**The Technique of Satyagraha to meet Foreign Aggression.** Gandhi indicated a plan of action in case of a foreign armed aggression, though he had not any opportunity to test it out. "A non-violent man or society," said Gandhi, "does not anticipate or provide for attacks from without." On the contrary, such a person or society firmly believes that nobody is going to disturb them. If the worst happens, there are two ways open to meet non-violence; to yield possession, but non-co-operate with the aggressor. Thus, supposing that a modern edition of Nero descended upon India, the representatives of the State will let him in, but tell him that he will get no assistance from the people. They will prefer death to submission. The second way will be non-violent resistance by a people who have been trained in the non-violent methods. They would offer themselves unarmed as fodder for the aggressor's canons. The underlying belief in either case is that even a Nero is not devoid of a heart. "The unexpected spectacle of endless rows upon rows of men and women," asserted Gandhiji, "simply dying rather than surrender to the will of an aggressor must ultimately melt him and his soldiery."<sup>35</sup>

Gandhi, therefore, offered two solutions to meet foreign aggression. During the invasion, the technique would consist in offering non-violent resistance up to death to the last man to the invader, and complete non-co-operation with him in all forms of non-violent *satyagraha* to which a detailed reference has been made above. The advice given by Gandhi to the Abyssinians, the Czechs, the Poles, the British and other victims of aggression are typical examples of his technique. To the Chinese he advised, "If the Chinese had non-violence of my conception, there would be no use left for the latest machinery of destruction which Japan possesses. The Chinese would say to Japan, 'Bring all your machinery, we present half of our population to you. But the remaining two hundred millions won't bend their knees to you.' If the Chinese did that, Japan would become China's slave."<sup>36</sup>

Gandhi, likewise, rejected the 'scorched earth' technique to check the advance of the aggressive forces. He did not accept it as consistent with the technique of non-violent resistance. "There is no bravery," he asserted, "in my poisoning my well or filling it in so that my brother who is at war with me may not use the water.... Nor is there sacrifice in it, for it does not purify me, and sacrifice, as its root meaning implies, pre-

34. *My Experiments With Truth*, op. citd., Vol. II, pp. 412-13.

35. *Harizan*, April 13, 1940.

36. *Harizan*, December 24, 1938.

supposes purity."<sup>37</sup> Gandhi even suggested that the people of an invaded country would not miss any opportunity of rendering human service to the individual members of the invading army in their personal capacity whenever they might be in distress.

**Attitude towards the State.** Gandhi did not directly make any suggestion as to the nature of a non-violent State. He was, in fact, more concerned with immediate rather than the future. His immediate concern was to free India from the subjection of the British through the technique of non-violent *satyagraha*. And the science of *satyagraha* was yet in the making. He was still experimenting with it. He even admitted that the experiment had not reached an advanced stage of development.<sup>38</sup> Moreover, he thought it desirable that the details of a non-violent State should be determined by the people according to their moral level and their preferences. It, accordingly, appeared to him premature and unscientific to detail the governmental shape of things to come. "I have purposely refrained from dealing with the nature of Government in a society based on non-violence....When society is deliberately constructed in accordance with the law of non-violence, its structure will be different in material particulars from what it is today. But I cannot say in advance what the Government based wholly on non-violence will be like."<sup>39</sup>

Gandhi's technique of *satyagraha* embraced both the constructive and destructive phases. On the one hand, it was a non-violent 'war' for the settlement of political and group disputes; on the other hand, it was constructive programme of minimizing, if not altogether eliminating, internal conflicts and contradictions. His constructive aspect of non-violent direct action, therefore, gives us sufficient clue to the nature of non-violent society which Gandhi would wish to have. His *Hind Swaraj*, and many stray passages in his speeches and statements also provide some material about the social order of his conception.

Gandhi has often been described as "philosophic anarchist". He rejected the State outright and in any of its forms. The State, he maintained, commands and whatever is commanded cannot carry with it the moral value of the individual's action. An action is moral only when it is voluntary and "No action which is not voluntary can be called moral....So long as we act like machines, there can be no question of morality. If we want to call an action moral, it should have been done consciously, and as a matter of duty."<sup>40</sup> Moreover, the authority of the State rests on violence. Wherever there is violence there is exploitation, whatever be the democratic nature of the State. "The State represents," he said, "violence in a concentrated and organised form. The individual has a soul, but the State is a soulless machine, it can never be weaned from violence to which it owes its very existence."<sup>41</sup> Gandhi, accordingly,

37. *Harijan*, March 22, 1942.

38. *Harijan*, May 27, 1939.

39. *Harijan*, February 11, 1938.

40. *Ethical Religion*, op. citd., p. 40.

41. *Modern Review*, October 1935. An Interview with Mahatma Gandhi by N.K. Bose.

desired to establish a society where truth and non-violence would prevail and spontaneity and purity of actions flowed from its inhabitants. There will be no exploitation in such a society as people have an abiding faith in God. This makes them to steadfastly hold to truth, love and service and all their actions, as such, will be based on co-operation. When the people co-operate voluntarily, there is no need of the State and the emerging result is a Stateless society, which the Anarchists envisage.

His ideal democracy, a Stateless and classless society, will consist of a number of self-contained and self-regulated village communities. Every village will be a republic or a **panchayat** having full powers even to meet foreign aggression, of course, in a non-violent way. The self-sufficient villages shall be bound together in a voluntary federation. But this federation will have its units the individuals, and not the states or provinces. In a federation of Gandhi's conception there will be no centralization of authority of any kind. Centralization, according to him, connoted force and anything based on force was opposed to freedom and morality. Voluntary co-operation of the individuals is the condition of dignified and peaceful existence<sup>42</sup> and this is the essence of Gandhiji's non-violent society. In such a society everyone is his own ruler, but he rules himself in such a way that he is never a hindrance to his neighbours.

But the idea of a classless and Stateless non-violent society, Gandhi admitted, was unrealizable as "a Government cannot succeed in becoming entirely non-violent, because it represents all the people. I do not today conceive of such a golden age. But I do believe in the possibility of a predominantly non-violent society. And I am working for it."<sup>43</sup> The attainable middle ideal, he conceived, was a predominantly non-violent State. What this predominantly non-violent State will be like? Gandhi said that the character of the State would entirely depend upon how the political power was won. If political power is won through the non-violence of the weak, then, the emerging State will be democratic, but exploitation will still continue, as the non-violence of the weak permits the use of violence. If the political power is won by the non-violence of the brave, which is the essence of Gandhi's technique of **Satyagraha**, the resulting State will be a genuine democracy wherein exploitation and coercion exist to the minimum.

The State, for Gandhi, is not an end in itself, "but one of the means of enabling people to better their condition in every department of life". Being one of the means, it is like various other associations which promote human welfare. It cannot claim any superior status and the individual owes to the State only limited and relative loyalty. He upheld the cause of the sovereignty of the people based on moral authority and conceded to the individual the right to resist the authority of the State, through non-violent means, if its policies and actions did not appeal to his moral conscience. "**Swarajya** for me," Gandhi said, "means freedom for the meanest of our countrymen." Applying his concept of **Swarajya**, he added, "Real **Swarajya** will not come by the acquisition of authority by a few but the acquisition of capacity by all to resist autho-

42. *Harijan*, January 13, 1940.

43. *Harijan*, March 9, 1940.



rity when abused." Gandhi, in fact, sought to develop in the people the capacity to resist the laws of the State, if they were repugnant to the individual's moral conviction, and such a resistance, he believed, was the only adequate safeguard against abuse of authority. It has been suggested that Gandhi's teachings involved a perpetual danger and anarchy. But resistance to political authority according to the Gandhian way, must strictly be non-violent, the path of a true *satyagrahi* and Gandhi himself, as a true *satyagrahi*, had resisted the tyranny of the State and society throughout his life.

Gandhi would entrust to the State minimum functions. He had a horror of the growing power of the State. By self-government, he meant a continuous effort to be independent of government control. "I admit," he said, "there are certain things which cannot be done without political power, but there are numerous other things which do not at all depend upon political power. That is why a thinker like Thoreau said that 'that government is best which governs the least'. This means that when people come into possession of political power, the interference with the freedom of the people is reduced to the minimum. In other words, a nation that runs its affairs smoothly and effectively without much State interference is truly democratic. Where such condition is absent the form of government is democratic in name."<sup>44</sup> His maxim, therefore, was: the less of the authority of the State, the greater the moral freedom of the individual and that is the real *swarajya* for him.

Gandhi advocated a return to the system of rural communities more or less self-sufficient in the matter of their basic needs. These communities composed of simple, manageable units would be co-operatively knit together. They will be autonomous for all purposes, including the administration of justice, and keeping peace in the locality as far as consistent with the unity of the State. This was for Gandhi real *swaraj*, because in this way people get their moral freedom from their environments which they understand and can effectively control according to their genius. The *panchayats* would run the village administration. The villages in their turn would elect their district administration, each village within the jurisdiction of a district exercising one vote. The district administration would elect the provincial administration and the provincial administrations a parliament or President who was to serve as the chief executive. Gandhi was, thus, against direct election. Direct elections, he believed, led to many evils like corruption, bribery, impersonation, etc.

Gandhi was exactly rigid in prescribing qualifications for the candidates seeking election. He prescribed that a candidate must be selfless, able and incorruptible. He should not hanker after office, avoid self-advertisement and must not indulge in running down his opponent and exploit the voters. Gandhi would not even permit canvassing for the votes. His ideal was let service of the people be the criterion for securing votes and voters should be left to themselves to judge who has really served them the best. Gandhi would give to all citizens, men and women, the right to vote. The only qualification he would prescribe for a voter is the manual work. "The qualifications for franchise should be,"

he said more than once, "neither property nor position but manual work. . . . Literary or property test has proved to be elusive. Manual work gives an opportunity to all who wish to take part in the government and the well-being of the State." Work, he further said, "will not be the antithesis of life, but the means of realizing the full content of life."

Such a State will be, according to Gandhi, a predominantly non-violent State, internally free and externally equal to other States. Freedom will exist and flourish, because the State is subject to no one else, and all its people, without barriers of caste, creed, religion, colour and sex, participate in its governance. And "if independence is born non-violently," Gandhi concluded, "all the component parts" of the State, "will be voluntarily interdependent working in perfect harmony under representative central authority which will derive its sanction from this confidence reposed in it by the component parts." But it does not mean that there will be no need for the police. There may be found even in a non-violent State some anti-social individuals who may resort to violence and break laws. Such people need be reformed and police will be needed for this purpose. But the police of Gandhi's conception will be entirely different as compared with the police which now maintains law and order and protects us from the undesired social elements. The ranks of the police, according to Gandhi, "will be composed of believers in non-violence. They will be servants, not masters of the people. The people will instinctively render them any help, and through mutual co-operation they will easily deal with the ever decreasing disturbances. The police force will have some kind of arms but they will be rarely used, if at all. In fact, the police men will be reformers. Their police work will be confined to robbers and dacoits. Quarrels between labour and capital and strikes will be few and far between in a non-violent State, because the influence of the non-violent majority will be so great as to command the respect of the principal elements in society. Similarly, there will be no room for communal disturbances. . . ." There will be no need for army to save the country from any kind of external aggression. The State of Gandhi's dream will have an army consisting of the entire non-violent populace, who meet the aggressor in offering non-violent resistance up to death and to the last man like true *satyagrahis*.

**Fundamental Rights.** The democratic State envisaged by Gandhi will have specific fundamental rights. These rights were contained in a resolution moved by Gandhi himself at the 1931 Karachi session of the Indian National Congress. The resolution read, "This Congress is of the opinion that to enable the masses to appreciate what *swarajya* as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any Constitution which may be agreed to on its behalf should provide or enable the *Swaraj* Government to provide for the following:

## 1. Fundamental rights of the people including:—

- (i) Freedom of association and combination.
- (ii) Freedom of the speech and the press.
- (iii) Freedom of conscience and free profession and practice of religion subject to public order and morality.
- (iv) Practice of the culture, language and script of the minorities.
- (v) Equal rights and obligations of all citizens without any bar on account of sex.
- (vi) No disability to attach to any citizen by reason of his or her religion, caste or creed or sex in regard to public employment, office of power or honour and the exercise of any trade or calling.
- (vii) Equal rights to all citizens in regard to public roads, wells, schools and other places of public resort.
- (viii) Right to keep and bear arms in accordance with regulations and reservations made in that behalf.
- (ix) No person shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.

## 2. Religious neutrality on the part of the State.

## 3. Adult suffrage.

## 4. Free primary education.

## 5. A living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against the economic consequences of old age, sickness, and unemployment.

## 6. Labour to be free from serfdom or from the conditions bordering on serfdom.

## 7. Protection of women workers, and adequate provision for leave during maternity period.

## 8. Provision against employment of children of school-going age in the factories.

## 9. Right of labour to form unions to protect their interests with suitable machinery for settlement of disputes by arbitration.

## 10. Substantial reduction in agricultural rent or revenues paid by the peasantry and in case of uneconomic holding exemption from rent for such period as may be necessary, relief being given to small zamindars wherever necessary by reason of such reduction.

## 11. Imposition of a progressive tax on agricultural incomes above a fixed maximum.

## 12. A graduated inheritance tax.



14. Expenditure and salaries in civil departments to be largely reduced. And no servant of the State, other than the specially employed experts and the like, to be paid above a certain fixed figure which should not ordinarily exceed Rs. 500 per month.
15. Protection of indigenous cloth by exclusion of all foreign cloth and foreign yarn from the country.
16. Prohibition of intoxicating drinks and drugs.
17. No duty on salt manufactured in India.
18. Control over exchange and currency policy so as to help Indian industries and bring relief to the masses.
19. Control by the State of key industries and ownership of mineral resources.
20. Control of usury."

Gandhi was egalitarian through and through. He did not believe that the ideal of non-violence could be realised in society so long as the wide gulf between the rich and the hungry millions remained. But by economic equality he did not mean absolute equality. His ideal was approximate equality. "Economic equality must never be supposed to mean possession of an equal amount of worldly goods by everyone. It does mean however that everyone will have a proper house to live in, sufficient and balanced food to eat, and sufficient *khadi* with which to cover himself. It also means that the cruel inequality that obtains today will be removed by purely non-violent means."<sup>46</sup> This Gandhi intended to bring about by the institution of trusteeship both on land and in industry.

**Property and Trusteeship.** From the perusal of the Fundamental Rights, which Gandhi had wished that the Swaraj Constitution of India should contain, flows the concept of "Trusteeship" and his views on property. His ideal of trusteeship aims at transforming the character of the rich. Every man, he claimed, has a right to have a "balanced diet, a decent house to live in, facilities for the education of one's children and adequate medical relief."<sup>47</sup> Any possession over and above, he regarded, superfluous. But the superfluous wealth must be held by those who possessed it as trustees of the people to be used for ameliorating their condition. He further said that "Everything belonged to God and was from God. Therefore, it was for His people as a whole not for a particular individual. When the individual had more than his proportionate portion, he became a trustee of that portion for God's people." As far back as 1928, he warned the capitalist class in India that unless they "help to avert that tragedy by becoming trustees of the welfare of the masses, and by devoting their talents not to amassing wealth for themselves but to the services of masses in an altruistic spirit, they will end either by destroying the masses or being destroyed by them."<sup>48</sup>

Gandhi did not contemplate any scheme of expropriating the capitalist and the landlord, if they change their mentality and work as trustees

46. *Harijan*, August 18, 1940.

47. *Harijan*, March 31, 1946.

48. *Young India*, December 20, 1928.

of the workers and the peasants. On the other hand, they should "supply brain to them and remove the present terrible inequality between them" and the workers and peasants. Gandhi's scheme, accordingly, did not envisage class antagonism. He aimed at "class collaboration and class co-ordination as the firm step towards the classless democracy in which everyone will perform same form of productive physical labour and there will be no exploiters". As trustees, the capitalists and the landlords would use their talent and the bulk of their earnings not for themselves, but as a trust for the good of society. They would be entitled to a reasonable rate of earnings determined by themselves in consultation with society. But the rate of payment "would not matter so long as they agreed to surrender their existing titles based on absolute ownership for a trusteeship basis". If the capitalists and the *zamindars* do not rise to the occasion and accept the new basis of ownership, the weapon of non-co-operation, Gandhi proposed, should be employed in order to make it impossible for the landlords and the capitalists to exploit. He warned the capitalist class to read the signs of the times, "revise their notions of God-given right of all they possess, in an incredibly short space of time the seven hundred thousand dung-heaps which today pass mostly as villages can be turned into abodes of peace, health and comfort. There is no other choice than between voluntary surrender on the part of the capitalist of superfluities and consequent acquisition of the real happiness of all on the one hand, and on the other the impending chaos into which, if the capitalist does not wake up be-times, awakened but ignorant, famishing millions will plunge the country and which not even the armed force that a powerful Government can bring into play can avert."<sup>49</sup>

Here is the summing up of the scheme of Trusteeship as given by Pyarelal, a very close associate of Gandhi.<sup>50</sup>

- "1. Trusteeship provides a means of transforming the present capitalist order of society into an egalitarian one; it gives no quarter to capitalism, but gives the present owning class a chance of reforming itself. It is based on the faith that human nature is never beyond redemption.
2. It does not recognise any right of private ownership of property except inasmuch as it may be permitted by society for its own welfare.
3. It does not exclude legislative regulation of the ownership.
4. Thus, under State-regulated trusteeship, an individual will not be free to hold or use his wealth for selfish satisfaction or in disregard of the interest of society.
5. Just as it is proposed to fix a living minimum wage, even so a limit should be fixed for the maximum income that could be allowed to any person in society. The difference between such minimum and maximum incomes should be reasonable

49. *Young India*, December 5, 1929.

50. U.N.E.S.C.O. Seminar, *op. citd.*, A Paper submitted by Pyarelal. Appendix E, p. 391.

and equitable and variable from time to time so much so that the tendency would be towards obliteration of differences.

6. Under the Gandhian economic order the character of production will be determined by social necessity and not by personal whim or greed."

Gandhi favoured State-ownership of industries, if capital and labour did not work as mutual trustees and trustees of consumers. But the nationalised State-owned industries "ought only to be working under the most attractive and ideal conditions, not for profit, but for the benefit of humanity." He would concede to the workers the right to elect their representatives, who should share in the management of these industries. He was, however, against centralization and mass production. Centralization and mass production, according to Gandhi, vitiated democracy. Concentration of political and economic power, he further maintained, was negation of fundamental rights and civil liberties and against the individual's moral freedom. Non-violence and centralised industries, whether under individual capitalism or State ownership, he held incompatible. Gandhi preferred individual violence to State violence, because the former was the lesser of the two evils. "If the State suppressed capitalism by violence it would be caught in the coils of violence itself... and fail to develop non-violence at any time. The State represents violence in a concentrated and organised form. The individual has a soul but the State is a soulless machine... Hence I prefer the doctrine of trusteeship."

**Estimate of the Gandhian Outlook.** Gandhi was a saint and a revolutionary. He revolutionised the course of politics by moralising it and devised a new strategy, based upon the twin principles of truth and non-violence, for the solution of the individual and group problems. The basis of the teachings of Gandhi is one of mutual adjustment, the feeling of contentment, and the desire to see others as happy as ourselves—a desire born of the spirit of live and let live and in essence that of co-operation. By developing this attitude one could not only lift oneself and enjoy true happiness, but also establish peace and happiness all round. This fact was amply demonstrated by Gandhi in his life-time by experiments on individual, social, national as well as international scale and he won for India the battle of her freedom. It is true that there were certain contributory factors that hastened the end of British rule, but the one most powerful factor was the great non-violent struggle which the country launched under the leadership of Gandhi. In fact, he had believed that the future of non-violence depended upon its successful fruition in India and, as such, "it was India's historic mission to deliver to mankind the message of non-violence."

The unique contribution of Gandhi, therefore, lies not in the fact that he has discovered new truths, but that he has applied old and eternal truths for the solution of modern problems. He is, indeed, the greatest exponent of the theory and practice of non-violence. There is some scepticism about the efficacy of non-violence as a solution of our problems, particularly in the international field. Yet, the present-day world standing on the brink of an abysmal cataclysm does find solace in the Gandhian outlook and his peaceful technique. 'If the world peace had hitherto remained elusive like a will-o'-the-wisp in spite of the fact



that no country professedly wanted war. It had been so because the world had not paid sufficient attention to the principles of peace and non-violence as preached by Gandhi. Now the war-scared and bewildered nations of the West do not find these methods the only way to have a real peace, but the very methods upon which depend human peace, freedom and culture, in fact, their survival. To put it a little more bluntly, the world today must choose between the Gandhian way of life and the atom or hydrogen bomb. Perhaps, the bellicose nature of man may be curbed by the real nature of man and the ultimate choice may be with "Gandhi". If such a revolution comes about in the dealings of mankind who can, then, say that the Gandhian way of life is not revolutionary.

Gandhi had faith in human nature and in its capacity, through a gradual process, to minimise evil. He realised that even the tallest among men have imperfections. But even the most depressed, he believed, cannot shake himself from the self-conscious impulse "to realise God who dwells in us". Accordingly, it was his conviction that it is more natural for man to be good than be evil, "though apparently descent may seem easier than ascent". Gandhi is, thus, a realist who believes in 'Futurism' and inevitability of progress. But he is not oblivious of the means. He forthwith rejects the maxim that end justifies the means. His maxim is as the means so the end and good means must be adopted for the realization of good ends. Good means and a good end, therefore, constitute a single whole pattern for him.

But in the realism of Gandhi there is the occasional touch of the celestial prophet and the ethereal mystic in him. This touch sometimes carries him high in the realm of idealism divorced from the realities of earthly life. His socio-economic structure of the non-violent democracy is inconceivable in the form in which he conceives it. He advocated a return to simplicity and nature. He opposed large-scale industrialism and mechanization. Later on, he becomes somewhat realistic, at least in the context of the future Indian society, and advocates a reconciliation of large-scale and small-scale industries, the rationalisation of key industries, and the organisation of "urban centres not as lop-sided out-growths but functioning as catering to the interests of the village where the real soul of India lay." He would even allow the electrification of the rural areas. But conceding all this, he brings forward his concept of trusteeship. It is true that Gandhi's scheme did not envisage class antagonism. But is it humanly possible to conciliate the two antagonistic classes to a scheme of class collaboration and class co-ordination? It may be divinely possible. If labour and capital did not work as mutual trustees of consumers, he would favour State ownership of industries. At the same time, he had horror of the State concentrating political and economic power, because it was the negation of fundamental rights and liberties, and, against the individual's moral freedom.

In a sense, Gandhi was an anarchist. He considered the State as an organisation of violence and force. He postulated that in the ideal State of his conception, **Ramrajya**, there will be the sovereignty of the moral authority of the people and the State would disappear. But he would not get rid of the State immediately, because of the imperfections of man. His immediate concern was to transform the present-day sover-

eign State, with its coercive authority, into a non-violent State through a non-violent society. Gandhi does not outline the structure of a non-violent State as its character would entirely depend upon how the political power was won. i.e., the quality of non-violence through which freedom is won. If it is won through the non-violence of the weak, the emerging State will be democratic but exploitation will continue. If the political power is won through the non-violence of the brave, the resulting State will be a genuine democracy where exploitation and coercion exist to the minimum. The non-violent State of Gandhi's dream will be internally free and externally equal to other States. Its aims would be to promote the greatest good of all and with a view to achieve this end it will govern the least leaving to individual initiative the largest part of the functions of the State. The State would meet foreign aggression and internal disturbances, as far as possible, non-violently; the police and the military will be least in evidence. In this way, the State will prepare for its own demise to be replaced by voluntary associations.

Is there any possibility of such a non-violent State to come into being? Does the Sovereign and Independent Republic of India fulfil the purposes of Gandhi's non-violent State? Is the socialistic pattern of society or the socialistic society, which the ruling Congress Party intends to establish, in conformity with the ideals of Gandhi? Are the representatives of the people the embodiment of Gandhi's ideal; selfless, able and incorruptible who have no craze for office and they do not indulge in self-advertisement and exploit the voters? Does the spirit of service dominate their lives and is that their merit which makes them representatives? Will the State, as today constituted in India, prepare the way for its own demise to be replaced by voluntary associations? These are some of the very pertinent questions which often agitate the minds of the students of Gandhian way of life. If Gandhi had been alive, perhaps, he would have either modified his views about the State or would have deplored the emerging State of his labour and sacrifices. Yet, the one redeeming feature is that his teachings remain the beacon light and inspiration to the people. But "his ideal", as Professor Bodh Raj Sharma succinctly observes, "so far as a poor mortal may foresee, will ever remain an ideal to be discussed in Seminars and papers until God wills otherwise."<sup>51</sup>

### SARVODAYA

**The followers of Gandhi.** If the teachings of Gandhi have failed to mould and shape the policies and transactions of the Central and State Governments in India, several of his disciples, acclaimed as the true followers of the Mahatma and his real successors, are still dedicated to the realization of that ideal social order wherein the moral man would live in a moral society. These followers of Gandhi were his closest associates, the inmates of his *ashram*, and are distinguishable from his political followers who have held and are holding the reigns of the government of the country and have twisted its destinies for more than two decades now. In his paper, "Second Thoughts on Gandhism," Devarat N. Pathak makes a sharp distinction between the **personal** and **political**

51. *Gandhian Concept of State*, p. 150.

followers of Gandhi and maintains that, "Now it may be easily conceded that Gandhism never received a wholehearted support even during Gandhi's lifetime. Congress which owed not a little of its success to Gandhi, often vehemently differed from him taking to a different path of action and policy, leaving Gandhi alone."<sup>52</sup> It was left to a few of his devotees to strictly adhere to his way of life.<sup>53</sup> "To his close followers," adds Professor Pathak, "Gandhi was a hard taskmaster, uncompromising and insistent on the minutest details of his programme. This inner ring of people followed Gandhi scrupulously and lived as small images of the master.... Beyond this circle stood a larger and more influential group of his followers like Sardar Patel, Nehru, Rajendra Prasad, Kripalani, Azad, Rajajee and others. **They all followed Gandhi's lead but they did not adopt Gandhism in its entirety....** If the Gandhites were the personal followers of Gandhi, the latter accepted him as their political leader. The former shunned politics and lived as Gandhi's inmates in the ashram. The latter group figured in political life and gained fame and popularity through their political career."<sup>54</sup>

Gandhi did not rejoice over the way India had won her Independence. In fact, he was afflicted, for it was the annihilation of his principles of truth and non-violence. He refused to give a message for the people on that historic day of the transfer of power. When the officer of the Information and Broadcasting Department, Government of India, who had come for a message, told Gandhi that if he did not give any message, it would not be good, he replied: "There is no message at all. If it is bad, let it be so."<sup>55</sup> The distressing developments inside the Congress after Independence and the moral degradation of the men in the Congress further agonised Gandhi<sup>56</sup> and he gave a serious thought to the future of the Congress. In the draft constitution of the reorganised Congress, which he prepared in the last days of his life, Gandhi had unequivocally stated that "...the Congress, in its present shape and form, as a propaganda vehicle and parliamentary machine, has outlived its use. India has still to attain social, moral and economic independence in terms of India's seven hundred thousand villages, as distinguished from cities and towns. The struggle for the ascendancy of civil over military power is bound to take place in India's progress towards its democratic goal. The Congress must be kept out of unhealthy competition with the political parties and communal bodies. For these and other similar reasons, the All India Congress Committee resolves to disband the existing Congress organisation and flower into a Lok Sevak Sangh under the following rules with the power to alter these as occasion may demand."<sup>57</sup>

52. *The Indian Journal of Political Science*, Conference Number, 1960, pp. 33-34.

53. Refer to series of Articles 1 to 18 under the caption "The Spirit's Pilgrimage" by Miran Ben in the *Illustrated Weekly of India*, Bombay, 1960.

54. *The Indian Journal of Political Science*, Conference Number, 1960, p. 34.

55. Tendulkar, D.G., *Mahatma, Life of Mohandas Karamchand Gandhi*, Vol. VIII, pp. 95-96.

56. Refer to a Note written by Gandhiji entitled "A Tragic Phenomenon", Tendulkar, *op. cit.*, Vol. VII, p. 186.

57. Tendulkar, D.G., *Mahatma, Life of Mohandas Karamchand Gandhi*, Vol. VIII, p. 342.



**Origin of the Sarvodaya Plan.** But the political followers of Gandhi were in no mood to liquidate the existing Congress. Gandhi, then, turned to his true and disciplined soldiers, his constructive workers, for the reconstruction of the social order in the context of the changed conditions of the country. It was decided to hold a small conference at Wardha sometime in February 1948. But Gandhi was assassinated on January 30, 1948, and the proposed conference could not be held. Subsequently a Sarvodaya Economic Conference was held on December 22 and 23 next year with Kaka Kalelkar as President and it adopted a plan "to attain social, moral and economic independence" as envisaged by Gandhi. The plan was published on January 20, 1950. It aimed to establish a Sarvodaya Society and Acharya Vinoba Bhave, a loyal and devoted follower of Gandhi, became its chief exponent. Jayaprakash Narayan later on joined Vinoba and since then Sarvodaya workers are busy in spreading the gospel of Sarvodaya adopting innumerable means to give it a practical shape.

In a Sarvodaya society "there will be freedom for all and utmost equality; there will be no class and castes; no exploitation nor injustice; no equal opportunity for each for fullest development. Man will be the centre of such a society, but self-interest will not be the basis of social organisation. Life in such a society will be integrated and whole, so that work, art and play will form a unified pattern making possible the growth of an integrated human personality." Thus, Sarvodaya society will be an ideal social order in which no one is down-trodden. It will be a society where "love is to reign and co-operation to prevail." A moral man in a moral society is the ultimate aim of Sarvodaya. Such a synthesis can be brought about by placing unflinching faith in man's dignity and growth, in human goodness and kindness and in the eternal instinct of mutual aid and co-operation. Gandhi had always believed in the eternal goodness of human nature and insisted on truth and non-violence as a means of changing hearts, and fighting against tyranny of all kinds. For him democracy was the basis of a non-violent and Sarvodaya society, which could be achieved by a decentralised socio-economic order based on cottage industrialism and village community life, self-governing and self-sufficient.<sup>58</sup>

**Sarvodaya Society.** Acharya Vinobha Bhave has outlined the following three characteristics of a Sarvodaya society and maintains that wheresoever and whenever these essential conditions are fulfilled such a society possesses the virtues of a Sarvodaya social order. But all these three characteristics are fundamental and they must be present and operate simultaneously.

(1) "No power should be dominant in society; there should only be a discipline of good thought;

(2) All faculties of the individual to be dedicated to society which must provide the individual for growth and development; and

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<sup>58</sup>. See *ante*, pp. 599-600. Also to the Draft Constitution of the Congress, Tendulkar, D.G., *Mahatma. Life of Mohandas Karamchand Gandhi*, Vol. VIII, pp. 342-344.

(3) The moral, social and economic values of all the callings performed honestly should be the same."

The Sarvodayavadis aim at the creation of a social order free from every form of authority, a stateless society where "the rulers and the ruled will be merged in the individual." They reject the State and its government no matter what its form, because both are coercive institutions and force is the ultimate sanction behind them. Even the welfare State does not offer them any satisfaction. "The welfare State," says Jayaprakash Narayan, "in the name of welfare threatens as much to enslave man to the State as the totalitarian State. The people must cry halt to this creeping paralysis." The human society must, therefore, be free from all coercive institutions. It does not, however, mean disappearance of the State all at once. "What we seek," Vinoba Bhavé says, "is to grow out of the state of affairs where there is no government into one where there is good government and from that condition to one where people are free of government altogether." His progression is from "no government", that is, the condition of anarchy where exploitation and oppression prevail, to "good government", where no power is dominant and justice prevails, to a social order absolutely "free of government."

The Sarvodayavadis, thus, do not exclude some form of government in the intervening stage of a Sarvodaya society. But they will eschew a representative democracy. Political parties, periodic elections and the rule of the majority are the indispensable parts of a representative government. The Sarvodayites condemn political parties and regard them as conspiracies against the people to divide them into warring camps. Parties create differences where there were none originally and they always take a narrow and partisan view of all matters. People become power crazy and there is scramble for party tickets which are manoeuvred through by all corrupt practices. The propertied class and the professional politicians control the party organisation and the party line and they employ all corrupt practices to get their nominees elected. Votes are even purchased, thus, debasing and demoralising the body politic. The result is obvious: "Suffrage for the rich and sufferance for the poor."

The Sarvodayites bewail the tyranny of the majority rule or the tyranny of the numbers, as it is described. "Political Science," Acharya Vinobha Bhavé says, "lays down that everything should be decided by majority. It started counting votes. If there are fifty-one votes in favour and forty-nine votes in opposition, then the former must have an overriding voice". Similarly, Jayaprakash Narayan maintained, "because fifty-one people out of a hundred decide to do a certain thing in a certain manner, why should the forty-nine people, who do not agree with that, be forced to accept that decision. What kind of democracy is this?" The laws passed in this way by the majority vote are not only oppressive to the minority, but also violate the principle of human unity and dignity as they consider "the individual as one of the many rather than as a unique individual possessing personality. It thus tends to dehumanise humanity."

The mechanism of administration which a representative democracy sets up concentrates power at the Centre and fortifies the power of

bureaucracy. Such a society with a centralized, complex and top-heavy administrative machinery, according to Jayaprakash Narayan, "cannot but be heaven for bureaucrats, managers, technocrats and statist. It cannot be a home for brothers to live together as brothers."<sup>59</sup> As for the services themselves, Acharya Vinoba Bhave says, "the highly expensive administration and other departments of the government are known as 'services', etc. And there are services galore: civil service, medical service, educational service, etc. The officials of the civil services are paid four-figure salaries, while their masters, the poor of the country whom they profess to serve have to live on a pittance of fifty paise a day. It is a tragic paradox that those who earn lakhs are called servants while those who produce food for the nation are regarded as self-seekers who work to further their own interest. What is one to say of these services? If words are not to be deprived of their meaning then this is nothing but cant and hypocrisy."<sup>60</sup>

Sarvodaya society will be a self-regulated and self-managed in small communities, rural or urban. Life in such a society will be a life of mutual aid and sharing, and of freedom. Freedom can be enjoyed fully and democracy practised directly and intelligently only when small communities are able to manage and regulate their affairs. Coercion will not be the basis of such a society. In fact, coercion of any kind will not exist there. If at all there will be coercion, it can be called coercion of love.

**Individual and the Society.** Men composing the Sarvodaya society will, thus, be bound together in love and by love, every individual living for others and all others living for every individual. To Gandhi, society is just like a family and the relation between the individual and the society is, therefore, one of close inter-dependence. He rejects the theory of *laissez faire*, let the individual be left alone and that he is not bound by social obligations. He also rejects the other extreme view that the individual is nothing without society and whatever he is it is because of society. Gandhi says, "I value individual freedom but you must not forget that man is essentially a social being. He has risen to the present status by learning to adjust his individualism to the requirement of social progress. Unrestricted individualism is the law of the beast of the jungle. We have learnt to strike the mean between individual freedom and social restraint. Willing submission to social restraint for the sake of the well-being of the whole society, enriches both the individual and the society of which one is a member". Gandhi stood for the ideal of the "greatest good of all" and throughout his life he strived for that. The individual comes first and the foremost in the Gandhian outlook and in any scheme of social progress the first step always lies with the individual. But Gandhi's *Swaraj* was concerned with the individual's inner freedom as well as his external freedom in society. Individual and society must march ahead together. All faculties of the individual, accordingly, be dedicated to society which provides him with opportunities for free growth and development. In this way, Sarvodaya has been defined "as a synthesis of individualism and socialism, directed at the good of all."

**Moral, Social and Economic Values.** The moral, social and economic

59. *Towards a New Society*, p. 35.

60. *Vinoba and His Mission*, p. 275.



mic value of the callings performed honestly must be the same. Gandhi drew his inspiration for Sarvodaya, or the ideal social order immediately from a reading of Ruskin's *Unto This Last* and he acknowledged it in his Autobiography. Gandhi wrote, "that a lawyer's work has the same value as the barber's inasmuch as all have the same right of earning their livelihood". It means that labour is the joy of life and labour must not be discriminated against labour. Elaborating it, Vinoba says, "It is futile to try and draw up a scale of the values of mental or manual services. How shall we pay in money the person who nurses a sick man and sits up with him in the night. What should be a judge's price for his impartial judgment. How shall we apply the rule of three in order to know how much is due to the man who pulls out of the water or saves us from the raging fire. These are infinitely precious services, in other words, they are priceless. It is, therefore, right that, giving up calculation, everyone should devote himself to the service of all with all he has, while society does its duty by providing for his keep."

Thus, in a Sarvodaya society there will exist no difference between mental and manual labour. Both stand at par and both will command equal utility and respect. "Love is to reign" supreme in such a society and all its members use their abilities and capacities to their best with a selfless purpose for the "greatest good of all". In Sarvodaya thinking physical labour and non-possession are the twin principles of true life and they fulfil the ideals of the principle of Communism: "From each according to his work to each according to his needs." In the Sarvodaya society all wealth, including land, will be a common property to be used for the good of each and all. There will be no class distinctions, the capitalists and the workers, and, as such, profit, rent and interest will lose their meaning and disappear. Everyone will work for society according to his capacity and receive from society according to his needs and in consonance with the needs of his fellowmen. Production in such a society will not be for commerce, but for consumption and mutual sharing. And "there will be no accumulation of wealth because all wealth will belong to society and each will receive only according to his needs and in consonance with the needs of fellowmen. Even social accumulations will be limited, remaining only as a safeguard against unforeseen needs."

**Transformation of Society.** A Stateless and classless Sarvodaya society cannot come into existence immediately and all at once. Society must be transformed to the Sarvodaya ideal. It is, therefore, necessary to continue with the existing institutions, but modifying and purifying them with the nobler and virtuous ideals of Sarvodaya till the people are ready and worthy to be free of the State and government. Gandhi had also said, "A Government cannot succeed in becoming entirely non-violent, because it represents all the people. I do not today conceive of such a golden age. But I do believe in the possibility of a predominantly non-violent society. And I am working for it." According to Acharya Vinoba Bhave: "Our first step will be to get Gram Raj (Government by the village): Then law suits and disputes will be judged and settled within the village. Then it will be Ram Raj (Kingdom of God): then there will no longer be any law suits or disputes and we shall live as one family."

The first stage in the transformation of a Sarvodaya society is Gram Raj and it is analogous to Gandhi's Panchayat Raj or Village Swaraj. Gram Raj means the organisation of society based upon small administrative units with a population not exceeding three to four thousands people, self-sufficient for economic purposes and serving as ideal convenient units for representative democracy. In Gram Raj individual ownership gives way to community ownership. There is no individual possession of land, labour and wealth. "Each owns everything. Each will offer his all to the community and the community will take care of him."

In a Gram Raj the State does not disappear. But it transforms its nature and the character of government "in consonance to a non-violent social order". Such a non-violent State possesses the following attributes which could in themselves be considered as important characteristics of Gram Raj.

(1) It is a secular State and all persons are free to profess and practise any religion or belief, so long as it does not interfere with the similar rights of others.

(2) There will be decentralization or what Acharya Vinoba calls **Shashan Vibhajan**, that is, every village is "a complete and a thorough State in miniature". According to Vinoba, "The very term Swaraj or self-government implies decentralization of authority. The principle has, therefore, to be applied to every practicable limit to all fields of life, social, economic and political."

(3) The State represents the sovereignty of the people "based on pure moral authority". That is, the will of the governed is to be the basis of the authority of the State and its functions.

(4) The State, whose essence is service, governs the least. Gandhi said, "I look upon an increase in the power of the State with the greatest fear, because, although while apparently doing good by minimising exploitation, it does the greatest harm to mankind by destroying individuality which lies at the root of all progress." But the conception of the least government as given by Gandhi should not be taken identical to the police functions of the State as believed by the Individualists. Being a service State based upon principles of non-violence, it strives to promote the "greatest good of all" by the free and willing co-operation of all the people.

(5) Service to the community must be the criterion and aim of all those functionaries entrusted with the performance of the duties of government. In the draft constitution for the Congress sketched by Gandhi, he held that "...this body of servants derive their authority and power from service ungrudgingly and wisely done to their master, the whole of India."<sup>61</sup>

(6) The policies of government should be conducted on the basis of **Lok Niti** in place of **Raj Niti**. It means partyless government which has its aim public good.

61. Tendulkar, D.G., *Mahatma, Life of Mohandas Karamchand Gandhi*, Vol. VIII, p. 343.

In a State possessing these characteristics Acharya Vinoba Bhave says: (i) the able will devote and concentrate their activities to the service of the people; (ii) individuals will be fully self-dependent and help each other; (iii) non-violence will be the basis of their continual co-operation or occasional non-co-operation or resistance; and (iv) every kind of honest work, moral and monetary, will have equal value. Such a State, with good government, paves the way for a Sarvodaya society, a new social order of government; Ram Raj or Kingdom of God.

**Evaluation.** There is something in common in Sarvodaya and Socialism-Communism. Acharya Vinobha Bhave says, "there is no permanent conflict between the two ideologies—Marxism Sarvodaya."<sup>62</sup> Both strive and aim at the State to disappear, abolition of exploitation and the principle from each according to his capacity to his needs. But there are two significant differences between the two. According to Dr. Kumarappa, in Sarvodaya, "its essentially spiritual basis is the very anti-thesis of Communism which is avowedly materialistic, although in regard to its goal Sarvodaya is similar to Communism."<sup>63</sup> The late K.G. Mashruwala observed that "the difference between Communism and Sarvodaya is not in the ends but in the means". All the same, it cannot be denied that there is much of Platonic in Acharya Vinoba Bhave's conception of a Sarvodaya society. Sarvodaya "especially in its political aspect," rightly observes Dr. Usha Mehta, "is more of an idea which has not as yet taken a practical shape. This is mainly because the utopia of the Sarvodayites flounders on the dock of human nature as it fails to take account of the 'lower' and 'baser' elements of human nature in its over-enthusiasm to emphasise the 'higher' and the 'better.'"<sup>64</sup> She further adds, "what is needed is not renunciation either of faith in human goodness or of politics but realising that it will take a millennium before the whole of humanity is transformed to divinity and raising the standard of political understanding and action; the remedy is not less of democracy but more of it."

But the personal followers of Gandhi have purified and dignified politics raising it to the faith in humanity. It is that eternal quest for freedom, happiness and social justice for which unceasing efforts have ever been made and shall always be made in all states of social development. "From time to time," observes Bryce, "hope is revived by the appearance of a group of disinterested reformers, whose zeal rouses a nation to sweep away abuses and leave things better than it found them."<sup>65</sup> The Sarvodayites are at least a reminder to the political followers of Gandhi of his ennobling ideals. The Government "in India today is more of a formal facade of democracy than its real essence and that we have failed to put the central arch in its edifice."<sup>66</sup>

62. *Communism and Sarvodaya*, reprinted in *New Age*, Oct., 1957, p. 41.

63. Editor's Note to *Sarvodaya* by M.K. Gandhi, p. iv.

64. *Sarvodaya and Democracy. The Indian Journal of Political Science*, Conference Number, October-December 1959, p. 374.

65. *Modern Democracies*, Vol. I, p. 56.

66. Usha Mehta, *op. cit.*, p. 371.



## SUGGESTED READINGS

- Dhawan, G.N. : *The Political Philosophy of Mahatma Gandhi.*
- Dhawan, G.N. : *Political Philosophy of Mahatma Gandhi. The Indian Journal of Political Science, January-March 1948, pp. 1-7.*
- Ghosal, A.K. : *Gandhian Philosophy, The Indian Journal of Political Science, January-March, 1949, April-June 1949, pp. 22-31.*
- The Indian Journal of Political Science, Conference Number, Oct.-Dec., 1959.*
- The Indian Journal of Political Science, Conference Number, 1960.*
- Kripalani, J.B. : *The Gandhian Way.*
- Majumdar, B.B. (Ed.) : *Gandhian Concept of State.*
- Munshi, K.M. : *Gandhi, The Master.*
- Munshi, K.M. : *I Follow the Mahatma.*
- Namboodiripad, E.M.S. : *The Mahatma and the Ism*
- Narayan, Jaiprakash : *Towards a New Society.*
- Sitaramayya, B.P. : *Gandhi and Gandhism. Vols. I. II.*
- Tendulkar, D.G. : *Mahatma, Life of Mohandas Karamchand Gandhi, 8 Vols.*
- UNESCO, Seminar on *Gandhian Outlook and Technique.* Ministry of Education, Government of India.
- Varma, V.P. : *Gandhi and Marx. The Indian Journal of Political Science, April-June 1954, pp. 115-33.*
- Vinoba Bhave : *Vinoba and His Mission.*

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